whether the trial court's decision fell within a range of reasonable options. See E-470 Pub. Highway Auth. v. Revenig, 140 P.3d 227, 230–31 (Colo. App. 2006).

## III. ANALYSIS

Landlord claims reversal is required because: 1) the factual findings of the trial court constitute an unlawful detention; 2) a tenant cannot seek damages when a landlord lacks control over the cause of the uninhabitable condition; 3) the breach of the covenant of quiet enjoyment must be "attributable to" Landlord for liability to attach; 4) Tenants failed to give proper notice of the uninhabitable condition of the unit; 5) Tenants failed to make sufficient payment into the court registry. The Court will examine each of these claims in turn, to determine if there was an error, and if so, whether that error requires reversal.

### i. Unlawful Detention

Landlord argues that the findings of the trial court constitute an unlawful detention under C.R.S. § 13-40-104(1)(d), and that the trial court was therefore bound by C.R.S. § 13-40-115(2) to enter a writ of restitution. Landlord asserts that the trial court's failure to enter a writ of restitution was an abuse of discretion. Landlord's argument is a mischaracterization of the findings of the trial court and fails to fully consider the complete statutory scheme that provides a defense to Landlord's action for possession.

The State of Colorado defines an unlawful detention as:

> (1) Any person is guilty of an unlawful detention of real property in the following cases:
>
> * * *
>
> (d) When such tenant or lessee holds over without permission of his landlord after any default in the payment of rent pursuant to the agreement under which he holds, and three days' notice in writing has been duly served upon the tenant or lessee holding over, requiring in the alternative the payment of the rent or the possession of the premises. . . [A]

> failure to pay such rent upon demand, when made, works a forfeiture.

C.R.S. § 13-40-104(1)(d) (the "FED Statute"). Landlord contends that the trial court finding that Tenants improperly offset rent in September meets FED Statute definition of an unlawful detainer. Landlord contends that courts are compelled by statute to issue a writ of restitution in all cases where an unlawful detention is found:

> [I]f the court finds that the defendant has committed an unlawful detainer, the court shall enter judgment for the plaintiff to have restitution of the premises and shall issue a writ of restitution.

C.R.S. § 13-40-115(2).

However, The FED Statute and C.R.S. § 13-40-115(2) must be interpreted in conjunction with C.R.S. § 38-12-507(1)(c), which permits a tenant to assert a breach of the warranty of habitability as a defense to an action for possession for the non-payment of rent:

> In an action for possession based upon nonpayment of rent in which the tenant asserts a defense to possession based upon the landlord's alleged breach of the warranty of habitability, upon the filing of the tenant's answer the court shall order the tenant to pay into the registry of the court all or part of the rent accrued after due consideration of expenses already incurred by the tenant based upon the landlord's breach of the warranty of habitability.

C.R.S. § 38-12-507(1)(c).

A statutorily recognized defense to the non-payment of rent would provide an obvious exception to the strict language of the FED Statute. There is no logical reason to issue a writ of restitution after the tenant successfully asserts a C.R.S. § 38-12-507(1)(c) defense to the action for possession.

Landlord cites a purported trial court finding that Tenants defaulted in the payment of rent for September and October as constituting the unlawful detainer. This is an incorrect and incomplete recitation of the findings of the trial court. The trial court

found that Tenants attempted to pay October rent on time, Transcript 20:10-11, were entitled to rent abatement, Transcript 5:2-12, and successfully asserted a breach of the warranty of habitability defense to the action for possession. Transcript 19:19-22. Tenants' successful defense to the action for possession precludes a finding of unlawful detainer.

The Record does not support a finding of an unlawful detainer in September or October. The portion of July rent that Tenants improperly offset with a September partial payment was ultimately awarded to Tenants, Transcript 16:21-24, and the trial court found Tenants' timely and full payment of October rent was rejected by Landlord. Transcript 20:10-11. Most decidedly, the trial court's recognition of Tenants' successful defense to the action for possession is necessarily mutually exclusive of any finding of unlawful detainer in September or October.

**ii. Lack of Control Defense**

Landlord cites C.R.S. § 38-12-508(5) as establishing a "Lack of Control Defense" where the remedy of rent abatement is precluded when Landlord proves the elements of the defense. As recited by the Landlord, the defense contains three elements: 1) the condition alleged to breach the warranty of habitability is the result of the action or inaction of a third party not under the control and direction of the landlord; 2) the landlord has taken reasonable, timely, and necessary steps to abate the condition; and 3) the landlord is unable to abate the condition due to circumstances beyond the landlord's reasonable control. Landlord contends that when those three elements are satisfied, the tenant's only remedy shall be termination of the rental agreement, to the exclusion of withholding rent. Landlord contends the Lack of Control Defense bars Tenants' withholding of August rent. Both parties concede that there are no reported cases addressing C.R.S. § 38-12-508(5).

Landlord's argument presents two issues: 1) whether Landlord proved the elements of the defense, and 2) if so, whether rent abatement is a permissible remedy. First, the trial court's findings and Landlord's communications to Tenants present

evidence that the breach of the warranty of habitability was eventually remedied, precluding a Lack of Control Defense. Second, even if Landlord may successfully assert the defense, Tenants' claim of breach of the covenant of quiet enjoyment would still permit Tenants' abatement of rent.

First, Landlord cannot invoke the purported defense because one of the elements of the purported defense was not present. The plain language of C.R.S. § 38-12-508(5) limits its applicability to situations where "the landlord is unable to abate the condition due to circumstances beyond the landlord's reasonable control."

On July 20, 2018 Tenants' counsel sent a letter notifying Landlord of the uninhabitable condition of the Premises and requested the termination of the Lease. Landlord denied this request and represented in a letter on July 23, 2018 that "all issues related to the unit have now been completely remediated by professionals." July 23 Letter to Tenants, Bates 026-027. The Record indicates that the Premises was restored to habitability by August 26, 2018. Transcript 11:11-14. Not only did Landlord deny the request for the very remedy that it now asserts is the only available remedy, it did so while representing that the Premises was fully remediated, which negates an essential element of the defense. Because Landlord was ultimately able to abate the condition and Landlord held out the Premises as habitable, the Court finds that the Landlord cannot prove all the elements of the Lack of Control Defense.

Even if Landlord could prove all the elements of the defense, it would not negate the award of rent abatement pursuant to the quiet enjoyment claim. It is well-settled that in the absence of an agreement to the contrary, within every lease there is an implied covenant for the quiet enjoyment of the leased premises. Radinsky v. Weaver, 460 P.2d 218, 220 (Colo. 1969). Colorado has adopted the Restatement (Second) of Property § 11.1 (1977) procedure for the abatement of rent for a breach of the covenant of quiet enjoyment. Bedell v. Los Zapatistas, Inc., 805 P.2d 1198, 1200 (Colo. App. 1991) ("If the tenant is entitled to an abatement of the rent, the rent is abated to the amount of that proportion of the rent which the fair rental value after the event giving the right to

abate bears to the fair rental value before the event. Abatement is allowed until the default is eliminated or the lease terminates, whichever first occurs").

The trial court found that the August remediation work breached the covenant of quiet enjoyment. Transcript 12:15-13:3. The Record indicates that during August part of the unit was not accessible, and the dust, in combination with the dehumidifiers and fans, impacted the right to quiet enjoyment. Transcript 12:15-13:3. The trial court correctly applied the Restatement (Second) of Property § 11.1 (1977) and Bedell v. Los Zapatistas, Inc. in determining August rent was to be abated through August 26, 2018.

The trial court correctly applied the facts of the case and Colorado precedent to determine that Tenants were entitled to an abatement of rent in August.

**iii. Covenant of Quiet Enjoyment**

Landlord argues that for Wildernest to be liable for a breach of the covenant of quiet enjoyment, the breach must be "attributable to" Wildernest. Landlord cites W. Stock Ctr., Inc. v. Sevit, Inc., where our Supreme Court stated, "the crucial issue for purposes of this case is whether the disturbance of the tenant's possessory interest is attributable to the landlord." W. Stock Ctr., Inc. v. Sevit, Inc., 578 P.2d 1045, 1051 (Colo. 1978) holding modified by Huddleston by Huddleston v. Union Rural Elec. Ass'n, 841 P.2d 282 (Colo. 1992).

The contractors employed in the case at hand were not analogous to the contractors employed under Sevit who performed a salvage operation unrelated to the tenant on an unrelated portion of a multi-tenant office building. Id. at 1047. In Sevit, the tenant alleged a breach of the covenant of quiet enjoyment by a commercial landlord that hired an independent contractor who negligently conducted repairs. Id. at 1048. The contractor's work resulted in a fire that destroyed the large commercial building of which the plaintiff was only one of several tenants. Id. at 1051. The tenant in Sevit sought to hold the landlord liable for the breach of the covenant of quiet enjoyment under a theory of vicarious liability. Id. at 1051.

Landlord cites the incorrect test for landlord liability for a breach of the covenant of quiet enjoyment. The Court in Sevit noted, "the usual test for liability of the landlord [for a contractor's breach of the covenant of quiet enjoyment] is whether or not the independent contractor might have performed the contract with the lessor without trespassing upon the leased premises or interfering with the lessee's enjoyment thereof." Sevit, 578 P.2d at 1051 (citing 49 Am.Jur.2d Landlord and Tenants 343).

Sevit does not require that the breach of the covenant of quiet enjoyment be directly attributable to Landlord in the case at hand. And Sevit itself has since been called into question by subsequent precedent. See Eskanos & Supperstein v. Irwin, 637 P.2d 403 (Colo. App. 1981) (landlord held liable for other tenants' continued breach of the covenant of quiet enjoyment). The "attributable to" factor was only examined after it was determined that the contractor did not need to disrupt the tenant's use of the building in order to perform their intended work. Id. at 1051. Had the contractors in Sevit needed to enter the tenant's portion of the building or interfered with the tenant's use of the unit, the landlord would have been liable for any resulting breach. Id. at 1051.

The "attributable to," factor is not reached because, unlike in Sevit, the trial court found ample evidence that the remediation work necessarily disrupted Tenants' use and enjoyment of the Premises. Transcript 11:15-19, 12:20-13:3. The disruption to the Sevit plaintiff's quiet enjoyment was unintentional and unforeseen; the disruption in the present case was an unavoidable consequence of the remediation work.

Tenants are not seeking to hold Landlord liable for the negligence of a third party but rather Tenants seek to enforce the covenant of quiet enjoyment against a party with which they have contractual privity. The contractors' breach of the covenant of quiet enjoyment has sufficient connection to the landlord-tenant relationship to hold Landlord liable. Landlord sought to establish itself as the sole contractor of repairs and maintenance of the Premises through Section 4.1 of the Lease which states "Landlord Agent shall be solely responsible for engaging Landlord Agent's affiliated maintenance and housekeeping department or a third party to make such repairs." Lease 4.1, Bates

003. Tenants have sufficient privity to establish Landlord's liability because the contractors were authorized to conduct repairs by Landlord to fulfill Landlord's obligations under the warranty of habitability and Section 4.1 of the Lease.

**iv. Notice and Timing Requirements**

Landlord argues Tenants provided insufficient notice to claim a breach of the warranty of habitability. Colorado law only requires an initial notice of the condition in question before the warranty of habitability may be breached. C.R.S. § 38-12-503(2)(c). A second notice is only required if a tenant seeks to terminate the lease for a breach of the warranty of habitability. C.R.S. § 38-12-507(1)(a). The requirements for the initial notice are laid out in C.R.S. § 38-12-503(2)(c):

> 2) A landlord breaches the warranty of habitability set forth in subsection (1) of this section if:
>
> ***
>
> (c) The landlord has received written notice of the condition described in paragraphs (a) and (b) of this subsection (2) and failed to cure the problem within a reasonable time.

C.R.S. § 38-12-503(2)(c). This provision requires two elements that must be met before a breach occurs: 1. written notice of the condition that breaches the warranty, and 2. allowance of "reasonable time" to cure the problem.

The July 12, 2018 email from Tenants to Landlord constitutes proper initial notice. On July 12, 2018, Mr. Cashion emailed Wildernest notifying Landlord of the "flood from the upstairs bathroom," the "unlivable" condition of the Premises, and his perceived need to move to his daughter's apartment. July 12 Letter to Landlord, Bates 022. Tenants' July 12, 2018 email constituted written notice of "the condition that breaches the warranty."

The second element in claiming a breach of the warranty of habitability is the allowance of "reasonable time" to cure the breach. C.R.S. § 38-12-503(2)(c). Upon Tenants' counsel sending the July 20, 2018 "formal notice to terminate the Lease for this

unit," 8 days had passed. July 20 Letter to Landlord, Bates 024-25; Transcript 5:18-8:4. The July 20 Letter stated that the unit remained uninhabitable, described the allegedly dangerous condition of the unit, and sought to terminate the lease. Id. In response on July 23, 2018, Landlord sent a letter denying that the unit was uninhabitable and claiming that "all issues related to the unit have now been completely remediated by professionals." July 23 Letter to Tenants, Bates 026-027. The trial court found that for at least the first week after the leak was discovered, the Premises was uninhabitable. Transcript 7:25-8:4.

Accordingly, the Court finds that the Tenants provided written notice and granted Landlord reasonable time to remedy the breach, as required by the Warranty of Habitability Statute.

**v. Deposit of Rent into the Court Registry**

Landlord asserts that the trial court abused its discretion by allowing Tenants to claim a breach of the warranty of habitability as a defense to the non-payment of rent without Tenants depositing into the registry the full amount claimed by Landlord. Landlord requested the deposit of August, September, and October rent, late fees, and liquidated damages. Landlord contends C.R.S. § 38-12-507(1)(c), precludes a defense to an action for possession based on an alleged breach of the warranty of habitability if the full amount of unpaid rent is not deposited into the court registry before trial. C.R.S. § 38-12-507(1)(c) provides:

> In an action for possession based upon nonpayment of rent in which the tenant asserts a defense to possession based upon the landlord's alleged breach of the warranty of habitability, upon the filing of the tenant's answer the court shall order the tenant to pay into the registry of the court all or part of the rent accrued after due consideration of expenses already incurred by the tenant based upon the landlord's breach of the warranty of habitability.

C.R.S. § 38-12-507(1)(c).

A trial court abuses its discretion if its ruling is manifestly arbitrary, unreasonable, or unfair. See Remote Switch Sys., Inc. v. Delangis, 126 P.3d 269, 274 (Colo. App. 2005). In assessing whether a trial court's decision is manifestly unreasonable, arbitrary, or unfair, we ask not whether we would have reached a different result but, rather, whether the trial court's decision fell within a range of reasonable options. See E-470 Pub. Highway Auth. v. Revenig, 140 P.3d 227, 230–31 (Colo. App. 2006).

It is evident that the statute is constructed to allow the trial court flexibility in what it requires the tenant to pay into the court registry. The court may require the deposit of "all or part of rent due," offering the court broad discretion in setting the amount to be deposited. The statute allows the court further discretion by permitting the amount to be adjusted with "due consideration" of the tenant's expenses. Notably, the statute only grants discretion in decreasing, not increasing, the amount to be deposited. The statute mentions only rent and does not include the late fees and liquidated damages claimed by Landlord. Furthermore, the "due consideration" adjustment only applies to the tenant's, not the landlord's, additional expenses.

Given the Record, we cannot say that the trial court abused its discretion in allowing the trial to proceed even though Tenants did not immediately comply with depositing the full sum initially ordered by the trial court. First, Tenants attempted to pay October rent directly to Landlord, Landlord rejected payment, Transcript 20:8-11, and after the rejection October rent was deposited with the trial court by Tenants. Transcript 18:4-5. Second, the initial deposit requested by Landlord included punitive liquidated damages that were impermissible under Perino v. Jarvis, 312 P.2d 108 (Colo. 1957); Transcript: 14:20-15:4. Third, given the lack of case law interpreting the statute, offering Tenants additional flexibility in depositing the rent accrued was not "manifestly unreasonable, arbitrary, or unfair." See Remote Switch Sys., Inc. v. Delangis, 126 P.3d at 274.

## III. ATTORNEY'S FEES

The Lease between Landlord and Tenants provides: "In the event that legal action is undertaken by any party to enforce the terms of this Lease, or to recover possession of the Residence, the prevailing party shall be entitled to recover from the other party all costs incurred in connection with such action, including actual attorney's fees and collection costs." Lease 9.13, Bates 006. Tenant, as the prevailing party upon appeal, is entitled to the costs and fees of the appeal. See Ranta Const., Inc. v. Anderson, 190 P.3d 835, 847 (Colo. App. 2008). The Court remands the case to the trial court to determine the Tenants' reasonable attorney's fees and costs incurred on appeal.

Tenant is ordered to file with the trial court an affidavit regarding fees, an itemized ledger of fees incurred on appeal, and a bill of costs.

## IV. CONLCUSION

For the reasons above the Court finds that the trial court did not err, and it **AFFIRMS** the decision of the trial court in its entirety.

## Applicant Details

| | |
|---|---|
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| Contact Phone Number | **8156005558** |

## Applicant Education

| | |
|---|---|
| BA/BS From | **Loyola University Chicago** |
| Date of BA/BS | **December 2017** |
| JD/LLB From | **University of Illinois, College of Law**<br>**http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp** |
| Date of JD/LLB | **May 14, 2022** |
| Class Rank | **10%** |
| Law Review/Journal | **Yes** |
| Journal(s) | **Illinois Bar Journal**<br>**University of Illinois Law Review** |
| Moot Court Experience | **No** |

## Bar Admission

## Prior Judicial Experience

| | |
|---|---|
| Judicial Internships/ Externships | **Yes** |
| Post-graduate Judicial Law Clerk | **No** |

## Specialized Work Experience

## Recommenders

Pahre, Jennifer
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## References

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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

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June 30, 2021

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
701 E. Broad Street
Richmond, VA 23219

Dear Judge Hanes,

I am a rising third-year law student at the University of Illinois College of Law, and I am writing to express my interest in serving as your Law Clerk for the 2022-2024 term. I have family on the East Coast, and am looking forward to continuing my professional career in the area.

My previous judicial experience has shaped my career goals and led me to pursue a clerkship in your chambers. Last summer, I had the pleasure of serving as a judicial extern for Judge Anna Loftus of the Circuit Court of Cook County's Chancery Division. While externing for the Judge, I was exposed to a wide variety of legal issues, and I learned how to analyze legal arguments both on my own and in collaboration with the Judge and her clerks. I also wrote for the Judge, crafting memoranda explaining legal issues and creating draft opinions on substantive motions. By the end of the summer, I knew that I wanted to pursue a clerkship. I went to law school so that I could use my knowledge to help others, and I know that assisting in the fair and equitable administration of justice is the best way to fulfill that goal.

I believe that my academic record and writing experience would make me a valuable addition to your chambers. In addition to being ranked in the top 10% of my class, I also serve as an Internet and Symposium Editor for the University of Illinois Law Review and the Co-Editor in Chief for the Illinois Bar Journal's monthly "Illinois Law Update" column. These positions sharpen my editing skills, and give me the opportunity to improve my own writing as well as collaborate with others on their work. I am further developing my research and writing skills this summer at the U.S. Securities and Exchange Commission, where I have edited and prepared written work product for various stages of the investigative process. I strive to consistently achieve the best result in the most efficient manner, and I will continue to find ways to expand my legal knowledge.

I have included my resume, transcripts, writing sample, and letters of recommendation from Professor Rummana Alam, Professor Jennifer Pahre, and current Law Clerk Alex Moe for your review. If you have any questions or would like additional materials, please feel free to contact me at alh8@illinois.edu or (815) 600-5558. Thank you for your consideration.

Sincerely,

Andrew Haberman

# Andrew Haberman

alh8@illinois.edu 1260 N Dearborn St. Apt 112, Chicago, IL 60610 (815) 600-5558


## EDUCATION

**University of Illinois College of Law** Champaign, IL
Juris Doctor, GPA: 3.69/4.0, Top 10% of Class, Rank 14/131 Expected May 2022

- *University of Illinois Law Review*, Internet and Symposium Editor
- Law School Run Club, President (2020-2021)
- *Illinois State Bar Journal* "Illinois Law Update" column, Writer (2020-2021), Co-Editor in Chief (2021-present)

**Loyola University Chicago** Chicago, IL
Bachelor of Arts, *magna cum laude*, History, GPA: 3.824/4.0 December 2017

- Minors: Spanish, Art History
- Academic Achievements: Phi Alpha Theta Honor Society Member, Golden Key International Honor Society Member, Loyola History Honors Program Member

## WORK EXPERIENCE

**U.S. Securities and Exchange Commission** Chicago, IL
Student Honors Program Intern (Division of Enforcement) May-July 2021

- Worked with attorneys throughout the summer on two active cases and investigations, performing various duties including drafting, researching, and editing
- Completed individual assignments for multiple attorneys in wide range of subject areas

**Circuit Court of Cook County, Chancery Division (Judge Anna Loftus)** Chicago, IL
Judicial Extern June-August 2020

- Researched legal issues for wide variety of cases and discussed cases with judge before and after hearing, providing analysis to assist in judge's ruling
- Wrote internal memoranda analyzing legal arguments of plaintiffs and defendants for motions for summary judgment in declaratory and injunctive relief actions
- Drafted memorandum opinion and permanent injunction on motion for summary judgment that became basis for judge's final written order and permanent injunction
- Observed daily court status calls as well as hearings for fee petitions, insurance declaratory actions, class action certification, motions for summary judgment, attorney motions to withdraw, settlement conferences, and emergency injunctive relief

**Louisiana Appleseed Center for Law & Justice** New Orleans, LA
Volunteer January 13-17 2020

- Researched relevant law pertaining to hardship licenses for informational pamphlet
- Assessed judicial district information and forms on self-represented litigants

**Cascino Vaughan Law Offices** Chicago, IL
Settlements Analyst March 2018-August 2019 (August 2019-February 2020 part-time)

- Analyzed information to resolve claims and submit new claims on behalf of injured clients
- Established estates for recently deceased clients

## COMMUNITY INVOLVEMENT AND PUBLICATION

- Boy Scouts of America- achieved rank of Life
- New Life Christian Church Food Pantry- monthly service giving food to locals in need
- Essay "Black Sam Bellamy: Robin Hood or Violent Anarchist?" chosen for publication in scholarly undergraduate journal (*The Chicago Style*, April 2017)

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# UNIVERSITY OF ILLINOIS AT URBANA - CHAMPAIGN

**Urbana, Illinois 61801**

**Student Name:** Haberman, Andrew L

**University ID:** 679624186 **Issue Date:** 10 - Jun - 21

**Level:** Law - Urbana-Champaign **Day - Month of Birth:** 18 - Feb

Most Recent Program(s)
College : Law
Major : Law

| SUBJ | NO. | COURSE TITLE | CRED | GRD | PTS | R |
|---|---|---|---|---|---|---|
| INSTITUTION CREDIT: | | | | | | |
| Fall 2019 - Urbana-Champaign | | | | | | |
| Law | | | | | | |
| Law | | | | | | |
| LAW | 601 | Contracts | 4.00 | A | 16.00 | |
| LAW | 602 | Property | 4.00 | A- | 14.68 | |
| LAW | 607 | Civil Procedure | 4.00 | A- | 14.68 | |
| LAW | 609 | Legal Writing & Analysis | 2.00 | B+ | 6.66 | |
| LAW | 627 | Legal Research | 1.00 | A | 4.00 | |
| Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 56.02 GPA: 3.73 | | | | | | |
| Spring 2020 - Urbana-Champaign | | | | | | |
| Law | | | | | | |
| Law | | | | | | |
| LAW | 603 | Torts | 4.00 | PD | 0.00 | |
| LAW | 604 | Criminal Law | 4.00 | PD | 0.00 | |
| LAW | 606 | Constitutional Law I | 4.00 | PD | 0.00 | |
| LAW | 610 | Introduction to Advocacy | 3.00 | PD | 0.00 | |
| LAW | 792 | Fund of Legal Practice | 1.00 | S | 0.00 | |
| Ehrs: 16.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00 | | | | | | |
| Fall 2020 - Urbana-Champaign | | | | | | |
| Law | | | | | | |
| Law | | | | | | |
| LAW | 600 | Pro Bono Service | 0.00 | S | 0.00 | |
| LAW | 647 | Income Taxation | 4.00 | A | 16.00 | |
| LAW | 668 | Decedents' Estates and Trusts | 3.00 | B+ | 9.99 | |
| LAW | 682 | Evidence | 3.00 | A | 12.00 | |
| LAW | 692 | Summer/Fall Externships | 4.00 | S | 0.00 | |
| LAW | 696 | Law Review | 1.00 | S | 0.00 | |
| LAW | 696 | IL Bar Journal | 1.00 | S | 0.00 | |
| LAW | 793 | Adv Legal Writing: App Adv | 2.00 | B | 6.00 | |
| Ehrs: 18.00 GPA-Hrs: 12.00 QPts: 43.99 GPA: 3.66 | | | | | | |
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|---|---|---|---|---|---|---|
| Institution Information continued: | | | | | | |
| Spring 2021 - Urbana-Champaign | | | | | | |
| Law | | | | | | |
| Law | | | | | | |
| LAW | 615 | Administrative Law | 3.00 | A- | 11.01 | |
| LAW | 680 | Professional Responsibility | 3.00 | B+ | 9.99 | |
| LAW | 686 | Remedies | 3.00 | A | 12.00 | |
| LAW | 696 | Law Review | 1.00 | S | 0.00 | |
| LAW | 696 | IL Bar Journal Staff | 1.00 | S | 0.00 | |
| LAW | 798 | Lgl Cultures of Early America | 3.00 | A- | 11.01 | |
| Ehrs: 14.00 GPA-Hrs: 12.00 QPts: 44.01 GPA: 3.66 | | | | | | |

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| TOTAL TRANSFER | 0.00 | 0.00 | 0.00 | 0.00 |
| OVERALL | 63.00 | 39.00 | 144.02 | 3.69 |

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University of Illinois College of Law
504 East Pennsylvania Avenue
Champaign, IL 61820

June 30, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Andrew Haberman
Candidate for Judicial Clerkship

Dear Judge Hanes:

I am very pleased to recommend my former student, Andrew Haberman, for any judicial clerkship that might be available.

Andrew was enrolled in my Remedies class this past semester. Notwithstanding the challenging learning environment that we endured, Andrew was always well-prepared and thoroughly engaged. He easily understood the import of the cases we reviewed, and his questions revealed a ready grasp of the course concepts. I thought his answers to the hypotheticals that we discussed showed a limber and well-organized mind. His final examination was nearly perfect, and he easily achieved an A in my course.

You will note that Andrew's success has not been limited to Remedies. He is currently ranked 10th in his class, and serves as a Law Review editor. In addition, he is a staff writer for the Illinois State Bar Journal, and a member of the Legal Aid Committee of the Chicago Bar Association. Andrew successfully completed a judicial externship with the Cook County Circuit Court's Chancery Division, where he was trusted to prepare documents that became the foundation for his judge's opinions. In all these capacities, Andrew has demonstrated that he is worthy of trust, and that he has the commitment to get the work done. I have no doubt that he will be a success wherever life takes him.

Finally, if you meet him, you will learn that Andrew is kind and thoughtful, and understandably popular with his peers in the College of Law. He has an upbeat demeanor and an engaging personality that wears well over time. I sincerely believe that he would be an asset to your chambers.

Please feel free to contact me if you should need any further information.

Very truly yours,

Jennifer N. Pahre, Teaching Assistant Professor and Director of Undergraduate Studies
University of Illinois College of Law

University of Illinois College of Law
504 East Pennsylvania Avenue
Champaign, IL 61820

June 30, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am delighted to recommend Andrew Haberman for a judicial clerkship. I have known Andrew since August of 2019 when he began his first year at the University of Illinois College of Law. He was a student in my Legal Writing and Analysis course during his first semester, and was also a student in my Introduction to Advocacy course during his second semester. During his time as my student, he was a strong writer and academic citizen. I had the opportunity to work closely with him and observe his many talents and strengths. Andrew approaches his research and writing carefully. In addition, he pays great attention to detail and structure. For these reasons, I strongly recommend Andrew for a Judicial Clerkship.

Andrew is a strong writer and carefully works on his analysis and writing. Our law school has a mandatory curve and our legal writing classes are small. Students who achieve a B+ or higher in my class are generally strong writing and analysis students. Andrew achieved a B+ in my Legal Writing and Analysis course during his first semester at the University of Illinois College of Law this past fall. During his second semester, the College of Law adopted a pass/fail grading scale due to the global pandemic. Andrew achieved a pass with distinction in my Introduction to Advocacy class and he was among the top students in that class. In that course, he drafted a pre-trial memorandum and appellate brief of skilled quality. He also presented an impressive oral argument.

Moreover, Andrew is a pleasure to work with and he is an excellent class citizen. He always came to class prepared and ready to participate. Furthermore, he is willing to work hard and put in extra effort for any task given. Andrew is both professional and friendly. In sum, Andrew's close attention to detail, his professional attitude, and friendly demeanor will make him an excellent judicial clerk.

Please do not hesitate to contact me if you require further information or if you would like me to elaborate on any of these comments. You may contact me at 217-333-4960 or by email at ralam@illinois.edu.

Very truly yours,

Rummana Alam
Teaching Assistant Professor

May 31, 2021
Re: Recommendation of Andrew Haberman

Dear Judge,

I write on behalf of Andrew Haberman, who is applying to serve in your chambers as a judicial clerk. I myself am a senior law clerk for Judge Anna Loftus, a General Chancery judge in Chicago. In that capacity, I had the pleasure of being Andrew's direct supervisor last summer during his externship with Judge Loftus. Andrew was a capable and perceptive extern who served our chambers well, and he would make an excellent candidate for your consideration.

As an extern, Andrew reviewed and abstracted briefs, observed hearings, and conducted research where appropriate. His work was accurate and consistent, and we were glad to be able to rely on it. During his time in chambers, his notes and abstracts on the facts and law regularly served as the Judge's primary point of reference for each case. Both the Judge and I quickly learned that we could take his work product at face value; his analyses were thorough and comprehensive.

Andrew was keenly aware of the importance of his work, and he was as attentive to detail in the first motion as the last. At every step he expressed interest in learning both the legal mechanics of the case and the impact on the parties: how the case had arisen, where the parties wanted it to go, and how it could—or should—resolve. Andrew was an attentive learner, digesting information about the complexities of the law, public policy, and the brass tacks of trial court litigation, and readily applying it to his work.

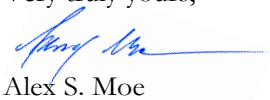
General Chancery receives most civil cases where equitable relief is sought, regardless of the specific area of law involved. Consequently, the Judge's caseload is extremely varied, and includes injunctions, administrative appeals, corporate disputes, FOIA, declaratory actions, and many more. Because of this varied caseload, the Judge relies on her staff to quickly learn and digest new areas of law in detail, and she usually prefers to talk things through when possible. Andrew's ability to pick up on new specific law and quickly integrate it with what he knew of general legal principles made him a valuable voice in those conversations, as a sounding board for the Judge right alongside her full-time law clerks.

Because the term of his externship ran during the summer of 2020, it was conducted entirely remote, via Zoom. Our interactions were frequent and pleasant, and he sat in on virtually every hearing conducted that summer. In chambers, Andrew was a good colleague to have, attentive to his work and collegial with staff. In his interactions with the public and with other members of the judiciary, he did the Judge and our chambers credit, and we were glad to have him.

Andrew is, in short, the sort of candidate who would do well in chambers, bringing his work ethic and professionalism to bear on new issues and law on a regular basis. I commend him to your consideration.

Should you require any additional information, please do not hesitate to contact me.

Very truly yours,



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**Writing Sample**

Attached please find a memorandum opinion that I drafted while working as a judicial extern for Judge Anna Loftus. The opinion grants a motion for summary judgment and enters a permanent injunction. I conducted my own research on the issues in addition to assessing the briefs filed by both parties. I have excluded the Procedural History section of the document. I have also redacted the party names and addresses. I refer to the parties by procedural terms only, and have replaced other identifying information with general terms. This memorandum was used as the basis for the Judge's written ruling. Citations may differ from Bluebook format at the Judge's request. This writing sample is being produced with the Judge's permission, and has minimal edits by the Judge and her staff.

OPINION AND ORDER

This matter comes before the court on Plaintiffs' Motion for Summary Judgment and Entry of Permanent Injunction. For the reasons stated below, the motion is granted, and a permanent injunction is entered. Defendant is enjoined from offering professional pet care services at Subject Property.

**I. Background**

**A. Factual Background**

Plaintiffs own and live in a townhome in Chicago. Compl. ¶ 3. They purchased the property in October of 2017. *Id.* at ¶ 8. Plaintiffs are in their seventies, and are passionate animal lovers with three small dogs. *Id.* at ¶ 3. Defendant lives in and owns the adjoining townhome at Subject Property. *Id.* at ¶ 4. The two townhomes share a common wall and a front yard. *Id.* at ¶ 10.

Defendant runs a dog day care operation from the house, called Pet Company. Compl. ¶ 11. It is not clear when she began running this operation, but she did previously run an animal care facility at another address before moving the operation to the Subject Property. *Id.* at ¶ 12. Defendant advertises Pet Company online, and the services she provides include: private pet care consultation, transportation, daycare, extended care, and training. *Id.* at ¶ 13-14; Ex. A. There are one to four dogs on the Subject Property on any given day. *Id.* at ¶ 19.

These dogs constantly bother Plaintiffs when they try to enter and leave their home. Compl. ¶ 24. The dogs would also regularly urinate, defecate and dig holes in the front yard. *Id.* at ¶ 21. The homeowners regulations prohibit permanent dividers between the two homes, but Plaintiffs have installed large temporary planters to keep Defendant's dogs away from them. *Id.* at ¶ 22.

While the planters prevent the dogs from entering Plaintiffs' front patio, they still fear for their safety. Compl. ¶ 25. Attempts to exit the house are met with large dogs from the Subject Property jumping on the planters, barking and growling at Plaintiffs and their dogs. *Id.*

**II. Legal Standard**

Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (Ill. 1992). Courts construe the pleadings, depositions, admissions and affidavits strictly against the moving party and liberally in the favor of the opponent when determining whether a genuine issue of material fact exists. *Adames v. Sheahan*, 233 Ill. 2d 276, 295–96 (Ill. 2009). Summary judgment is not appropriate where material facts are disputed or where reasonable persons might draw different inferences from undisputed material facts. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (Ill. 2004). Summary judgment is encouraged to aid in the expeditious disposition of a lawsuit; it

nevertheless is a drastic remedy and should only be allowed where "the right of the moving party is clear and free from doubt." *Gilbert v. Sycamore Municipal Hosp.*, 156 Ill. 2d 511, 518 (Ill. 1993).

A plaintiff who moves for summary judgment does not need to prove their case. *Simmons v. American Drug Stores, Inc.*, 768 N.E.2d 46, 51 (Ill. App. Ct. 2002). Rather, the plaintiff must provide facts that support the elements of the cause of action. *Connaghan v. Caplice*, 757 N.E.2d 971, 974 (Ill. App. Ct. 2001). The party moving for summary judgment bears the burden of proof. *Nedzvekas v. Fung*, 872 N.E.2d 431, (Ill. App. Ct. 2007). This burden may be satisfied by showing an element of the case may be resolved in the moving party's favor, or by demonstrating the lack of evidence to support the nonmoving party's case. *Barrett v. FA Group, LLC*, 90 N.E.3d 537, 545 (Ill. App. Ct. 2017).

**III. Motion for Summary Judgment**

The Verified Complaint has two counts, and the Motion for Summary Judgment is on both counts. Count I of the Verified Complaint is for Private Nuisance. Plaintiffs argue Defendant's operation of the dog business is a substantial invasion of their interest in the use and enjoyment of their property. Compl. ¶ 27. Count II seeks a declaratory judgment of the violation of the Chicago Municipal Code. Plaintiffs argue the Subject Property is not properly zoned for a kennel/daycare business. Compl. ¶ 46-47. Both counts seek to enjoin Defendant from operating the dog daycare business at the Subject Property.

**A. Count I- Private Nuisance**

A private nuisance is a substantial invasion of another's interest in the use and enjoyment of their land. *Dobbs v. Wiggins*, 401 Ill. App. 3d 367, 375 (5th Dist. 2010). The nuisance must be either intentional or negligent and unreasonable. *Id.* The nuisance can be noise produced on the defendant's land which impairs the use and enjoyment of the neighboring land. *Id.* at 376.

**1. Intentional**

Plaintiffs argue the nuisance is intentional because Defendant judicially admitted (through lack of response to a request to admit) to engaging in a for-profit animal care service at the Subject Property for animals she does not own without a license. Pl.'s Mot. Summ. J. Ex. G. The invasion does not have to include the defendant specifically trying to burden another, but occurs when the defendant knows an invasion is substantially certain to result. *Dobbs*, 401 Ill. App. 3d at 377. Since the two homes have a shared front area, Defendant knew that the dogs would have infringed on Plaintiffs' property. Pl.'s Mot. Summ. J. Defendant also ignored the repeated requests to cease her conduct before the lawsuit. *Id.*

The nuisance was intentional. Defendant knew or should have known that operating a dog daycare on the Subject Property would result in dogs roaming in Plaintiffs' yard. The photographs provided by Plaintiffs demonstrate that Defendant had the dogs in the shared font

area, and she cannot have expected them to only walk on half of the open space. Plaintiff Aff. Ex. B. The shared front area is 270 square feet, and Defendant had up to four dogs at one time. Pl.'s Mot. Summ. J. The presence of the temporary planters does not affect Defendant's intent, as the planters were installed by Plaintiffs. Defendant anticipated that the dogs would invade the Plaintiffs' part of the yard, making the invasion intentional.

**2. Substantial**

In determining this element, courts consider the effect the nuisance would have on a normal person of ordinary habits and sensibilities. *Dobbs*, 401 Ill. App. 3d at 377. Up to 4 dogs on Defendant's property at one time produce barking and other noise that prevents Plaintiffs from utilizing their front patio. Pl.'s Mot. Summ. J. These dogs produce a genuine threat to the safety and well-being of Plaintiffs. *Id.* Plaintiffs fear that they may be injured if one of the dogs knocks over the temporary planters or makes physical contact with them. *Id.*

Plaintiffs fail to prove the invasion was substantial. This issue operates on a reasonable person standard. Plaintiffs argue that the dogs pose a genuine physical threat to their safety and well-being. Pl.'s Mot. Summ. J. Plaintiffs, who are in their seventies and fear for their safety from a dog greeting or barking at them, do not equate with a reasonable person standard. The fact that Plaintiffs' motion relies on their own frailty is in direct conflict with the reasonable person standard set out in the motion itself and its supporting case law. The standard requires the invasion be substantial to "a normal person of ordinary habits and sensibilities", not someone who is unduly sensitive or "delicate, fastidious or pursuing a dainty way of life." *Dobbs*, 401 Ill. App. 3d at 377. Plaintiffs seem to fit the "unduly sensitive and/or delicate" person identified in *Dobbs*, and are therefore not indicative of a reasonable person in the context of private nuisance.

The ability to enter and leave one's own house is certainly an action that deserves to be protected, and having dogs digging and defecating in the front yard may be a substantial interference. However, once the planters had been installed, the interference ties directly to Plaintiffs' safety and less to a general ability to live comfortably.

With the temporary planters in place, the invasion amounts to barking, dog heads peeking through the plants, and Plaintiffs' fear for their safety (which does not equate with a reasonable person standard). Barking dogs can annoy, but that alone cannot satisfy the substantial element under a reasonable person standard. In assessing a summary judgment motion, the Court draws facts and inferences against Plaintiffs. Knowledge of Plaintiffs' distinction from a person of ordinary habits is sufficient in this case.

**3. Unreasonable**

This element is a balancing test, with the harm done to the Plaintiffs on one side and the benefit of Defendant's use of the land and the suitability of the use in that particular location on the other side. *Dobbs*, 401 Ill. App. 3d at 376, 378. Plaintiffs argue the Subject Property is unsuitable for the dog day care because it is not properly zoned and Defendant does not have a

license to conduct commercial activities at the property. Pl.'s Mot. Summ. J. The Subject Property is residentially zoned, and the City of Chicago Zoning Ordinance does not permit the operation of animal daycare/boarding businesses in residentially zoned neighborhoods. *Id.* at Ex. D. Defendant cannot claim any legitimate benefits of her business for these reasons.

The harm to Plaintiffs is significant. They have a protectable right in the quiet enjoyment of their property. This right outweighs Defendant's benefits due to her impermissible uses of the Subject Property. There is little if any benefit caused by Defendant's use of the land for the daycare, especially when considering the suitability of the use in the particular location. The Subject Property is unsuitable for Defendant's operation due to the zoning of the area and her lack of a license. This all but eliminates any weight she has on the balancing scales. Therefore, the balancing test weighs in Plaintiffs' favor.

**4. Conclusion**

Plaintiffs fail to successfully establish a private nuisance claim. Plaintiffs successfully argue that the nuisance is unreasonable and intentional. However, the nuisance is not substantial, because the crux of Plaintiffs' argument is based on fears for the elderly Plaintiffs' safety, and Plaintiffs have not proven that they fall under the umbrella of a reasonable person for the present motion. Summary Judgment on Count I is denied.

**B. Count II- Violation of Chicago Municipal Code**

Plaintiffs next argue that Defendant violated the zoning regulation of the Subject Property. Any owner of real property within 1200 feet of the property in question who can demonstrate that their property will be substantially affected by a zoning violation may institute an action to prevent such unlawful use. 65 Ill. Comp. Stat. 5/11-13-15 (2018). Plaintiffs' unit is within 1200 feet of the property in question. Pl.'s Mot. Summ. J. Plaintiffs also are substantially affected by the violation, because their entry and exit from their own house is interfered with by the dogs.

The operation of a dog kennel and/or dog daycare facility is also prohibited without a license issued by the Illinois Department of Agriculture. Pl.'s Mot. Summ. J. Ex. H-I. Defendant does not have a license. Pl.'s Mot. Summ. J. Ex. B. The City of Chicago also prohibits operation of a dog daycare without first obtaining a license, which Defendant does not have. *Id.*

**1. Zoning Violation**

The City of Chicago's Zoning Ordinance does not permit the sheltering, boarding, and/or kenneling of dogs in a residentially-zoned area. Pl.'s Mot. Summ. J. Ex. H-I. The Subject Property is zoned as part of Residential Planned Development No. 0. *Id.*

Defendant's use of the Subject Property violates the City of Chicago's Zoning Ordinance. The language of the ordinance fits with the activities of Defendant's daycare operation, and the

house is not zoned for such an activity. Plaintiffs are also within 1200 feet of the Subject Property- they share a front yard and a wall.

**2. Lack of License**

The operation of a dog kennel and/or dog day care facility is expressly prohibited without a license from the Illinois Department of Agriculture, and the City of Chicago also prohibits the activity without a license. 225 Ill. Comp. Stat. 605/3(a); Chi. Municipal Code § 4-384-020. Defendant does not possess a license, and does not assert that she has a license. Pl.'s Mot. Summ. J. Ex. B. Defendant's activities fall under the reach of the statute and Chicago Municipal Code, and there are no disputes about the fact that she does not have a license.

**3. Substantial Effect**

The substantial element of the Municipal Code is different from the substantial private nuisance factor (which Plaintiffs do not meet) because this requirement is not a reasonable person standard, and applies to the property as opposed to the occupant. The Illinois Municipal Code does not require "specific, special, or unique damages" or "any adverse effect" on the property from the alleged violation. 65 Ill. Comp. Stat. 5/11-13-15 (2018). Alleging the proximity requirement and that the violation affects the property in question is sufficient to state a claim under the statute. *Avery v. GRI Fox Run, LLC*, No. 2-19-0382, 2020 WL 1875196, at *8 (Ill. Ct. App. Apr. 15, 2020).

The nuisance of barking is not necessarily substantial under a reasonable person standard, but the effect of Defendant's violation of the Subject Property's zoning is sufficiently substantial for the zoning violation count. Plaintiffs are substantially affected by the zoning violation because the effect of the violation interferes with their usage of their yard. Since the standard is not a reasonable person standard, Plaintiffs satisfy the substantial element.

**4. Conclusion**

Plaintiffs successfully establish a claim under Count II. Plaintiffs fall within the parameters of the Illinois statute to bring a claim for a zoning violation. Defendant's actions and evidence of her actions demonstrate the violation of the Chicago Municipal Code. Summary Judgment on Count II is granted.

**IV. Permanent Injunction**

Plaintiffs are seeking a permanent injunction against Defendant barring her from providing dog care services at the Subject Property. Both the Temporary Restraining Order and Preliminary Injunction were not obeyed. Pl.'s Mot. Summ. J. Ex. C-F.

The elements for a permanent injunction are 1) a clear and ascertainable right in need of protection, 2) irreparable harm if injunctive relief is not granted, and 3) no adequate remedy at law. *Sparks v. Gray*, 334 Ill. App. 3d 390, 395 (5th Dist. 2002). Permanent injunctions extend or

maintain the status quo indefinitely when the above elements are met. *Id.* A court is not required to balance equities before enjoining an intentional zoning ordinance violation. *Reiter v. Neilis*, 125 Ill. App. 3d 774, 779 (3d Dist. 1984).

**A. Clear and Ascertainable Right in Need of Protection**

To establish a clear and ascertainable right in need of protection, a plaintiff must raise a fair question that it has a substantive interest recognized by statute or common law. *Delta Med. Sys. v. Mid-America Med. Sys., Inc.*, 331 Ill. App. 3d 777, 789-90 (1st Dist. 1987). A well-pleaded complaint for injunctive relief must contain on its face a clear right to relief and allege facts which establish the right to such relief in a positive, certain and precise manner. *Nameoki Tp. v. Cruse*, 155 Ill. App. 3d 889, 898 (5th Dist. 1987).

Plaintiffs satisfy this element. The core of Count II is a claim for a zoning violation. The Illinois Municipal Code grants parties a private right of action where (a) their property is within 1200 feet of the allegedly offending property, (b) they are substantially affected by the alleged violation, and (c) a copy of the Complaint has been served on the chief municipal officer. 65 Ill. Comp. Stat. 5/11-13-15. Plaintiffs have proven proximity and substantial effect elements, and have satisfied the service element. Plaintiffs have asserted facts that give them standing to claim a private right of action to enforce a zoning violation, since their right comes from the above statute. It is a clear and ascertainable right in need of protection.

**B. Irreparable Harm**

An irreparable injury is one which cannot be adequately compensated in damages or measured by any certain pecuniary standard. *Diamond Sav. & Loan Co. Royal Glen Condo. Ass'n*, 173 Ill. App. 3d 431, 435 (2d Dist. 1988). Irreparable injury does not necessarily mean injury that is great or beyond the possibility of compensation in damages, but is the type of harm of such constant or frequent recurrence that no fair or reasonable redress can be had in a court of law. *Bally Mfg. Corp. v. JS&A Group, Inc.*, 88 Ill. App. 3d 87, 94 (1st Dist. 1980).

Plaintiffs do not need to satisfy this element due to their claim under a statutory violation. *City of Chicago v. Piotrowski,* 576 N.E.2d 64, 68 (Ill. App. Ct. 1991). Nevertheless, the Court observes that the harms appear substantial. The risks of physical injury and deprivation of enjoyment of their own land are not redressable with monetary damages.

**C. No Adequate Remedy at Law**

It is widely held that money damages constitute adequate compensation absent a showing that it would be impossible, rather than merely complicated, to ascertain the amount of damages. *Wilson v. Wilson*, 217 Ill. App. 3d 844, 856-59 (1st Dist. 1991). But "the fact that plaintiffs' ultimate relief may be a monetary judgment does not deprive a court of equity the power to grant" injunctive relief. *All Seasons Excavating Co. v. Bluthardt*, 229 Ill. App. 3d 22, 28 (1st Dist. 1992) (citing *K.F.K. Corp. v. Am. Cont'l Homes, Inc.*, 31 Ill. App. 3d 1017, 1021 (2d Dist.

1975)). Instead, "for a legal remedy to preclude injunctive relief, the remedy must be 'clear, complete, and as practical and efficient to the ends of justice as its prompt administration as the equitable remedy.'" *In re Marriage of Hartney*, 355 Ill. App. 3d 1088, 1090 (2d Dist. 2005).

Plaintiffs do not need to establish this element because their claim comes from a statutory violation. *City of Chicago v. Piotrowski,* 576 N.E.2d 64, 68 (Ill. App. Ct. 1991). Nevertheless, the element would be satisfied. Plaintiffs' argument under Count II is that it is illegal for Defendant to provide professional pet care services out of a home. If Plaintiffs are correct, the only way to remedy the existence of Defendant's dog operation would be to enjoin it.

**V. Order**

Plaintiffs' Motion for Summary Judgment and Entry of Permanent Injunction is granted as to Count II. A Permanent Injunction is entered as to Count II as follows:

1. Defendant is prohibited from operating a dog kennel, dog day care, or from otherwise offering professional pet services, under the name "Pet Company" or any other name, at Subject Property.
2. Defendant is prohibited from allowing any dogs on her property of which she is not the sole owner on Subject Property. This prohibition includes dogs for which Defendant alleges co-ownership.
3. This permanent injunction is to take immediate effect, and is to remain in full force and effect as long as Defendant resides at Subject Property.
4. Violation of this Order shall be punishable by contempt of Court.

## Applicant Details

| | |
|---|---|
| First Name | **Jacob** |
| Middle Initial | **N** |
| Last Name | **Haddad** |
| Citizenship Status | **U. S. Citizen** |
| Email Address | **jnhaddad@email.wm.edu** |
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| Contact Phone Number | **4014658761** |

## Applicant Education

| | |
|---|---|
| BA/BS From | **Boston College** |
| Date of BA/BS | **May 2019** |
| JD/LLB From | **William & Mary Law School**<br>**http://law.wm.edu** |
| Date of JD/LLB | **May 21, 2022** |
| Class Rank | **25%** |
| Law Review/Journal | **Yes** |
| Journal(s) | **Environmental Law and Policy Review** |
| Moot Court Experience | **No** |

## Bar Admission

## Prior Judicial Experience

| | |
|---|---|
| Judicial Internships/ Externships | **No** |

| | |
|---|---|
| Post-graduate Judicial Law Clerk | **No** |

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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

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jnhaddad@email.wm.edu

June 14, 2021

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
Spottswood W. Robbinson III and Robert R. Merhige Jr. Federal Courthouse
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes:

I am a second-year student at William & Mary Law School, and I am writing to apply for a clerkship in your chambers. I am excited at the prospect of staying in my adopted state of Virginia to begin my legal career. Attached are my resume and transcript for your review.

Coming off of my most successful term of law school with a semester GPA of 3.8, I know that I can succeed as your law clerk by employing my organizational, research, writing, and time management skills in your chambers. I hope to continue learning about new areas of law and their application to cases that come before you each week. I will also bring a dedication to constant learning and a desire to uphold the integrity of the judiciary. Doing my part to ensure a functioning judicial branch and help ensure justice prevails will be the greatest honor of my life.

My research and writing skills have proven effective in law school. In the summer following my 1L year, I was a research assistant for two professors in areas of law that I had not yet studied. I quickly got up to speed in order to perform my job to the best of my ability. During my 2L year, I employed my research and writing abilities to craft a comparative analysis of three different legal systems for my comparative law class in addition to writing a note on international-environmental law as part of my position on the *Environmental Law and Policy Review*. Currently, I am undertaking an independent project under the supervision of a professor to further improve my writing abilities this summer.

My organizational, communication, and time management skills have flourished in college and law school, and they will serve me well as your clerk. Interning in college while keeping up with my classes, including two independent study projects in my senior year, forced me to learn how I best work and set achievable goals for myself. I learned what I could accomplish in a set time, and I use that knowledge to plan ahead and, when necessary, adapt quickly to changing circumstances which are common in a fast-paced profession. As a remote research assistant and remote in-house intern for The Alignment Initiative, I needed to communicate effectively over emails, zooms, and other electronic formats, as well as keep myself organized in a completely remote world. Having successfully managed to work and study remotely with professors across the country and colleagues all over the world, I am excited to work in person again and employ these skills to their maximum effect.

Thank you for your consideration of my application. I would value the opportunity to further discuss my skills and abilities in an interview. I look forward to hearing from you.

Sincerely,

Jacob N. Haddad

# JACOB N. HADDAD

4 Pine Grove Avenue
Lincoln, Rhode Island 02865
(401) 465-8761

2106 Montgomerie Arch
Williamsburg, Virginia 23188
jnhaddad@email.wm.edu

## EDUCATION

***William & Mary Law School***, Williamsburg, Virginia
J.D. expected, May 2022
G.P.A.: 3.54; Class Rank: Top 23%
Honors: ***William & Mary Environmental Law and Policy Review***, Assistant Symposium Editor
Phi Delta Phi
Activities: Public Service Fund, Business Manager

***Boston College***, Chestnut Hill, Massachusetts
B.A., Political Science, May 2019
G.P.A.: 3.44
Honors Thesis: *The Evolution of the Electoral College*
Activities: University Wind Ensemble, Executive Board Member
Study Abroad: Geneva, Switzerland (Fall 2017)

## EXPERIENCE

***US Election Assistance Commission*** June 2021 to Present
Legal Intern. Anticipated responsibilities include drafting guidelines for electronic pollbooks as a recommendation for state election officials.

***The Alignment Initiative***, Lausanne, Switzerland January 2021 to Present
In House Legal Fellow. Crafted and edited various corporate documents including articles of incorporation and bylaws. Researched non-profit incorporation process in multiple countries. Currently working on processing and completing incorporation as non-profit in the US.

***William & Mary Law School***, Williamsburg, Virginia May to August 2020
Research Assistant, Professors Rebecca Green and Linda Malone. Researched and comparatively analyzed state election laws to provide judges and state officials a resource to aide with anticipated litigation. Researched changes in environmental law and summarized research findings clearly and concisely for inclusion in professor's treatise.

***United States Senator Edward J. Markey***, Boston, Massachusetts January 2018 to May 2019 &
Senior Intern September 2016 to May 2017
Researched and analyzed proposed legislation on issues including infrastructure and the environment among other topics. Spoke with constituents and worked to resolve their issues with federal agencies. Drafted Congressional inquiries to executive branch agencies. Planned, organized, and executed a town hall event. Advanced Senator at Congressional field hearing, press conferences, and community meetings. Transcribed speeches.

***Global Social Observatory (United Nations Affiliate)***, Geneva, Switzerland October to December 2017
Intern. Analyzed and researched topics ranging from tax issues, to environmental concerns, to labor disputes. Wrote a research paper on environmentally safe and economically sound processes to close abandoned mines. Attended meetings, conferences, and treaty negotiations of various UN entities including the Human Rights Council, Commission for Trade and Development, and the Commission on Science and Technology.

***Mount Saint Charles Fine Arts Summer Camp***, Woonsocket, Rhode Island Summers 2014 to 2019
Teacher/Counselor. Taught and supervised various classes of 20-30 children daily.

## ACHIEVEMENTS & INTERESTS

*Eagle Scout*
*High School Salutatorian*

Interests include playing tennis and percussion.

WILLIAM & MARY LAW SCHOOL
OFFICE OF CAREER SERVICES

# Unofficial Transcript

**Note to Employers from the Office of Career Services regarding Grade Point Averages and Class Ranks**:

- Transcripts report student GPAs to the nearest hundredth. **Official GPAs are rounded to the nearest tenth and class ranks are based on GPAs rounded to the nearest tenth.** We encourage employers to use official Law School GPAs rounded to the nearest tenth when evaluating grades.
- Students are ranked initially at the conclusion of one full year of legal study. Thereafter, they are ranked only at the conclusion of the fall and spring terms. William & Mary does not have pre-determined GPA cutoffs that correspond to specific ranks.
- Ranks can vary by semester and class, depending on a variety of factors including the distribution of grades within the curve established by the Law School. Students holding a GPA of 3.6 or higher will receive a numerical rank. All ranks of 3.5 and lower will be a reflected as a percentage. The majority of the class will receive a percentage rather than individual class rank. In either case, it is likely that multiple students will share the same rank. Students with a numerical rank who share the same rank with other students are notified that they share this rank. Historically, students with a rounded cumulative GPA of 3.5 and above have usually received a percentage calculation that falls in the top 1/3 of a class.
- Please also note that transcripts may not look the same from student-to-student; some individuals may have used this Law School template to provide their grades, while others may have used a version from the College's online system.

***Transcript Data***

**STUDENT INFORMATION**

**Name :** Jacob N. Haddad

**Curriculum Information**

**Current Program**
Juris Doctor
**College:** School of Law
**Major and Department:** Law, Law

***Transcript type:WEB is NOT Official ***

**DEGREES AWARDED**

**Sought:** Juris Doctor **Degree Date:**

**Curriculum Information**

**Primary Degree**
**College:** School of Law
**Major:** Law

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Institution:** | 59.000 | 59.000 | 59.000 | 37.000 | 131.30 | 3.54 |

**INSTITUTION CREDIT** -Top-

**Term: Fall 2019**

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|
| LAW | 101 | LW | Criminal Law | B+ | 4.000 | 13.20 | |
| LAW | 102 | LW | Civil Procedure | A | 4.000 | 16.00 | |
| LAW | 107 | LW | Torts | B | 4.000 | 12.00 | |
| LAW | 130 | LW | Legal Research & Writing I | A- | 2.000 | 7.40 | |
| LAW | 131 | LW | Lawyering Skills I | P | 1.000 | 0.00 | |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Current Term:** | 15.000 | 15.000 | 15.000 | 14.000 | 48.60 | 3.47 |
| **Cumulative:** | 15.000 | 15.000 | 15.000 | 14.000 | 48.60 | 3.47 |

Unofficial Transcript

**Term: Spring 2020**

**Term Comments:** Universal Pass/Fail grading was mandated by the faculty for all Spring 2020 Law classes due to the COVID-19 pandemic. Students had no option to choose ordinary letter grades.

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|
| LAW | 108 | LW | Property | P | 4.000 | 0.00 | |
| LAW | 109 | LW | Constitutional Law | P | 4.000 | 0.00 | |
| LAW | 110 | LW | Contracts | P | 4.000 | 0.00 | |
| LAW | 132 | LW | Legal Research & Writing II | P | 2.000 | 0.00 | |
| LAW | 133 | LW | Lawyering Skills II | P | 2.000 | 0.00 | |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Current Term:** | 16.000 | 16.000 | 16.000 | 0.000 | 0.00 | 0.00 |
| **Cumulative:** | 31.000 | 31.000 | 31.000 | 14.000 | 48.60 | 3.47 |

Unofficial Transcript

**Term: Fall 2020**

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|
| LAW | 140D | LW | Adv Writing & Practice: Trans | B+ | 2.000 | 6.60 | |
| LAW | 303 | LW | Corporations I | B+ | 3.000 | 9.90 | |
| LAW | 380 | LW | Comparative Law | B+ | 3.000 | 9.90 | |
| LAW | 424 | LW | Environmental Law | A | 3.000 | 12.00 | |
| LAW | 496 | LW | Intl Business Transactions | B+ | 3.000 | 9.90 | |
| LAW | 762 | LW | W&M Environ Law/Policy Review | P | 1.000 | 0.00 | |

| | Attempt | Passed | Earned | GPA | Quality | GPA |
|---|---|---|---|---|---|---|

| | Hours | Hours | Hours | Hours | Points | |
|---|---|---|---|---|---|---|
| **Current Term:** | 15.000 | 15.000 | 15.000 | 14.000 | 48.30 | 3.45 |
| **Cumulative:** | 46.000 | 46.000 | 46.000 | 28.000 | 96.90 | 3.46 |

Unofficial Transcript

**Term: Spring 2021**

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|
| LAW | 115 | LW | Professional Responsibility | A | 2.000 | 8.00 | |
| LAW | 409 | LW | International Law | A- | 3.000 | 11.10 | |
| LAW | 453 | LW | Administrative Law | A | 3.000 | 12.00 | |
| LAW | 716 | LW | Power & Influence | B+ | 1.000 | 3.30 | |
| LAW | 749 | LW | Non-Profit Organztn Externship | P | 3.000 | 0.00 | |
| LAW | 762 | LW | W&M Environ Law/Policy Review | P | 1.000 | 0.00 | |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Current Term:** | 13.000 | 13.000 | 13.000 | 9.000 | 34.40 | 3.82 |
| **Cumulative:** | 59.000 | 59.000 | 59.000 | 37.000 | 131.30 | 3.54 |

Unofficial Transcript

**TRANSCRIPT TOTALS (LAW - FIRST PROFESSIONAL)** -Top-

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Total Institution:** | 59.000 | 59.000 | 59.000 | 37.000 | 131.30 | 3.54 |
| **Total Transfer:** | 0.000 | 0.000 | 0.000 | 0.000 | 0.00 | 0.00 |
| **Overall:** | 59.000 | 59.000 | 59.000 | 37.000 | 131.30 | 3.54 |

Unofficial Transcript

**Allison Orr Larsen**
**Professor of Law and Director, Institute of the Bill of Rights Law**

**William & Mary Law School**
P.O. Box 8795
Williamsburg, VA 23187-8795

Phone: 757-221-7985
Fax: 757-221-3261
Email: amlarsen@wm.edu

June 09, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

**Re: Clerkship Applicant Jacob Haddad**

Dear Judge Hanes:

I am a law professor at William and Mary law school and a student of mine, Jacob Haddad, has applied to be your law clerk. I certainly recommend Jacob for the job.

I taught Jacob in Administrative Law in the spring of 2021, a class of approximately 60 students. Jacob was always prepared for class, and I could tell that he listens very intently. He asks good questions and his contributions to discussions are always on point and relevant. I remember specifically that Jacob once gently corrected me (with a polite question after class) when I accidentally recited the steps to Kisor deference incorrectly. He also asked questions consistently that were a level above what I expect from the typical law student. Jacob kept me on my toes all semester and clearly, he has an eye for detail.

Not surprisingly, Jacob did very well on my admin law exam (an exam that has strict word limits and time limits). He earned one of only five A's I awarded that semester. I was particularly impressed with his ability to convey arguments concisely: he articulated analogies to precedent and tapped into normative sentiments driving the doctrinal tests all while not losing focus and sticking to the point. It was quite a sophisticated exam.

I have no doubt Jacob will make a terrific law clerk. He is bright, hardworking, and conscientious. Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/

Allison Orr Larsen
Professor of Law and Director, Institute of the Bill of Rights Law
William & Mary Law School
amlarsen@wm.edu; (757) 221-7985

**Evan J. Criddle**
**Ernest W. Goodrich Professor of Law**

**William & Mary Law School**
P.O. Box 8795
Williamsburg, VA 23187-8795

Phone: 757-221-3808
Fax: 757-221-3261
Email: ejcriddle@wm.edu

June 09, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to recommend Jacob Haddad, an excellent student at William & Mary Law School, for a clerkship in your chambers.

Having launched my own professional career as a judicial clerk, I have a good sense of the qualities that distinguish effective clerks, including a keen intellect, polished research and writing skills, and the ability to accept direction and collaborate well with others. Based on my observations, Jacob possesses all of these traits. I am confident, therefore, that he would excel in this role.

I became acquainted with Jacob during the Spring 2021 term, when he enrolled in my International Law course. Jacob contributed regularly to class discussions, offering insightful comments that reflected his mastery of the subject matter. He often remained after class to ask questions, continue conversations, or solicit career advice about international and comparative law, and I enjoyed these opportunities to interact with him on a more personal level. At the end of the semester, Jacob performed admirably on the final examination, demonstrating superb legal analysis and polished writing skills.

Knowing Jacob's interest in public service, from time to time, I have shared career opportunities that have come to my attention, and I have encouraged him to apply for judicial clerkships. Jacob tells me that he loves legal research and is excited for the challenge to hone his professional skills while engaging in public service as a judicial clerk. If offered the opportunity to spend a year clerking in your chambers, Jacob would be a model of diligence and enthusiasm.

In sum, based on all of my interactions with Jacob, I believe that he would perform admirably as a judicial clerk. Please do not hesitate to contact me by telephone (cell: 757-775-8244) or email (ejcriddle@wm.edu) if there is any other information I can provide to advance his candidacy.

Best regards,

/s/

Evan J. Criddle

# Jacob Haddad

## WRITING SAMPLE

I prepared this piece during my legal writing class. This piece is substantially my own work.

**IN THE**
**UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF GEORGIA**
**ALBANY DIVISION**

| | | |
|---|---|---|
| Padma Patil, | ) | |
| | ) | |
| *Plaintiff* | ) | |
| | ) | |
| v. | ) | Civil Action No: 4247cv-03162020 |
| | ) | Jury Trial Waived |
| MegaMart Inc., a Georgia Corporation | ) | |
| | ) | |
| | ) | |
| *Defendant* | ) | |

**MEMORANDUM SUPPORTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

## INTRODUCTION

Defendant MegaMart is before this court to defend its right to protect itself against shoplifters. Plaintiff, Dr. Padma Patil was involved in an incident at MegaMart where the anti-shoplifting device was activated and an investigation into the incident took place. Plaintiff has brought this suit of false imprisonment against MegaMart for doing what the State of Georgia has given them the legal right to do: protect their business. MegaMart filed a Motion for Summary Judgment because the Joint Stipulation of Facts shows that MegaMart deserves judgment as a matter of law. MegaMart never imprisoned Plaintiff when they asked her to wait in an unlocked room. Should the Court find that a detention occurred; however, MegaMart acted as any reasonable company would do when its anti-shoplifting alarm was activated, by investigating the situation. As Georgia law notes, establishments that provide notice of an alarm's use, like MegaMart, have reasonable cause to investigate when the alarm is activated. In the potential detention, MegaMart acted in a reasonable manner by not touching Plaintiff. Any

detention also lasted for a reasonable length, ending as soon as MegaMart completed the investigation. In light of the overwhelming evidence, Defendant MegaMart respectfully requests the Court grant the Motion for Summary Judgment.

## STATEMENT OF FACTS

On July 30, 2019, shortly after 2:00 p.m., MegaMart's anti-shoplifting alarm was activated after Dr. Padma Patil's tote bag passed the alarm sensors when she fell back, still in the store. (Patil Aff. 1:1-2:6.) Dr. Patil is a Virginia citizen and MegaMart, Inc. is a corporation organized under Georgia law. (Pl.'s Comp. ¶¶ 1-2.) Upon hearing the alarm, MegaMart's security guard, Serena Greenglass, ran over to the door, picked up the tote bag, and began to ascertain if Plaintiff attempted to shoplift. (Greenglass Dep. 5:6-13.) Greenglass asked Plaintiff if she had seen the notices of the use of anti-shoplifting devices, but Plaintiff answered in the negative. (*Id.* at 5:15-17.) Finding no receipt for the items in the bag, Greenglass asked Plaintiff to accompany her to the backroom. (*Id.* at 6:1-2.) Greenglass offered to help Plaintiff get up from her fall, but Plaintiff refused help. (*Id.* at 5:23-6:1.) Plaintiff stated in her affidavit that Greenglass "was very petite" and would not be able to help her up. (Patil Aff. 3:9.)

On the way to the back of the store, Greenglass did not touch Plaintiff and tried to make polite small talk with her, with no success. (Greenglass Dep. 6:8-14.) Once at the back of the store, Greenglass tried to have Plaintiff wait in the meeting room as store policy specified, but because it was occupied, she asked Plaintiff to wait in the next closest available room. (*Id.* at 6:15-22.) Plaintiff was not happy with the room available and showed her irritation by waving her cane around, nearly hitting Greenglass. (*Id.* at 6:22-7:1.) Greenglass gently took the cane, placed it just outside the room, and closed the door, leaving it unlocked as she went to investigate the incident. (*Id.* at 7:1-7.)

Greenglass immediately contacted store manager Seth Marinakis to aid in the investigation. (*Id.* at 7:9-10.) Marinakis and Greenglass arrived at the self-checkout station Plaintiff had used, where MegaMart's technician, Alicia Torres, was investigating if the machine had malfunctioned. (Marinakis Dep. 4:3-14.) During the investigation, Greenglass left to take a personal call while Torres and Marinakis continued their work. (Greenglass Dep. at 7:15-16.) Upon finishing her phone call, Greenglass returned to the checkout machine just as Torres and Marinakis finished ascertaining that Plaintiff had paid for the items and the machine had failed to send a "paid" signal for the items she purchased. (Marinakis Dep. at 5:1-16.) Marinakis immediately took a gift card, went to the back of the store, and apologized to Plaintiff. (Greenglass Dep. 7:16-18.) Plaintiff exited the store immediately afterwards. (*Id.* at 7:18.) About thirty-five minutes elapsed after the alarm sounded. (*Id.* at 7:20.) Plaintiff was in the room for thirty minutes. (Patil Aff. 4:15.)

## ARGUMENT

### I. MegaMart's Motion for Summary Judgment Should be Granted. Patil was asked to wait in an unlocked room. Additionally, Patil had set off the anti-shoplifting alarm, was not touched by MegaMart employees, and was only in the room for thirty minutes.

Plaintiff Padma Patil was not falsely imprisoned because she had set off the anti-shoplifting alarm; therefore, the Motion for Summary Judgment should be granted. In this jurisdiction, false imprisonment is the unlawful detention of another for any length of time in which they are deprived of their personal liberty. Ga. Code Ann. § 51-7-20 (2019); *Mitchell v. Lowe's Home Ctrs.*, 506 S.E.2d 381, 383-84 (Ga. Ct. App. 1998); *Williams v. Food Lion*, 446 S.E.2d 221, 223-24 (Ga. Ct. App. 1994); *Estes v. Jack Eckerd Corp*, 360 S.E.2d 649, 652 (Ga. Ct. App. 1987). In Georgia, a shopkeeper may lawfully detain a suspected shoplifter when he has reasonable cause, it is done in a reasonable manner, and it lasts no longer than a reasonable amount of time. Ga.

Code Ann. § 51-7-60 (2019); Ga. Code Ann. § 51-7-61(b)-(c) (2019); *Lowe's Home Ctrs.*, 506 S.E.2d at 384; *Brown v. Super Disc. Mkts.*, 477 S.E.2d 839, 840-41 (Ga. Ct. App. 1996); *Arnold v. Eckerd Drugs of Ga.*, 358 S.E.2d 632, 633-34 (Ga. Ct. App. 1987); *Estes*, 360 S.E.2d at 651-52; *Luckie v. Piggly-Wiggly Southern, Inc.*, 325 S.E.2d 844, 846 (Ga. Ct. App. 1984); *Colonial Stores, Inc. v. Fishel*, 288 S.E.2d 21, 23-24 (Ga. Ct. App. 1981). Because MegaMart is a Georgia citizen, and Plaintiff is a Virginia citizen, this Court sits in diversity jurisdiction; therefore, this issue is governed by the laws and cases of the state of Georgia. 28 USC § 1332 (2019).

As noted in the Joint Stipulation, no genuine issue of material fact exists. MegaMart can show by a preponderance of the evidence that the actions taken by their employees were both justified and reasonable. Therefore, MegaMart would be entitled to judgment as a matter of law, and summary judgment is appropriate. There was no detention, but if the Court should find that one existed, then it was reasonable in cause, manner and length. The Plaintiff was asked to stay in an unlocked room while the investigation was ongoing. When the anti-theft alarm was set off, Serena Greenglass, an employee of MegaMart, had a reasonable belief that the Plaintiff was trying to shoplift. Greenglass did not touch the Plaintiff. Finally, any detention lasted for thirty minutes, only as long as necessary for the investigation to be completed. Because the facts show that MegaMart acted reasonably, Defendant respectfully requests that the Court grant the Defendant's Motion for Summary Judgment.

*A. In Georgia, false imprisonment occurs when someone is unlawfully detained and deprived of liberty, which did not occur here because Plaintiff was asked to wait in an unlocked room.*

The Plaintiff was not falsely imprisoned when she was asked to wait in an unlocked room. In this jurisdiction, false imprisonment is only accomplished when there is a detention by force or fear without any voluntary actions by the claimant. Ga. Code Ann. § 51-7-20 (2019); *Mitchell v.*

*Lowe's Home Ctrs.*, 506 S.E.2d 381, 383-84 (Ga. Ct. App. 1998); *Williams v. Food Lion*, 446 S.E.2d 221, 223-24 (Ga. Ct. App. 1994); *Estes v. Jack Eckerd Corp*, 360 S.E.2d 649, 652 (Ga. Ct. App. 1987). In *Estes v. Jack Eckerd Corp.*, the defendant's employee stopped Estes after the anti-shoplifting device sounded and rummaged through her purchases to verify that she was not trying to shoplift. *Estes*, 360 S.E.2d at 650. Facts remained in dispute for the jury to determine, but the Court of Appeals of Georgia stated that restraint by force or fear was necessary to recover for false imprisonment. *Id.* at 652.

*Mitchell v. Lowe's Home Ctrs.* involved a woman who had mistakenly charged a purchase to a stranger's account and was taken into the manager's office because they thought she had done it maliciously. *Lowe's Home Ctrs.*, 506 S.E.2d at 383. There, the Court of Appeals of Georgia made it clear that the fact that Mitchell was in the manager's office was not enough to constitute detention, but that it would be up to the jury to decide whether or not she felt compelled to stay there due to fear, because there was no mention of force. *Id.* at 383-84.

In *Williams v. Food Lion*, the Court of Appeals of Georgia noted that false imprisonment cannot be found as a matter of law when the plaintiff acted on his own free choice. *Food Lion*, 446 S.E.2d at 224. There, the plaintiff remained in the checking aisle voluntarily to clear himself of suspicion despite employees blocking his exit. *Id.* at 223-24.

Here, Plaintiff was asked to follow Greenglass to the room and wait there while the investigation was ongoing. Just as Mitchell went to the manager's office on her own with no force, Plaintiff, here, also made the decision to accompany Greenglass into the back room and was not touched or forced in any way. *See Lowe's Home Ctrs.*, 506 S.E.2d at 383-84. Like Estes, Plaintiff had no reason to fear for her safety as even she admitted Greenglass was petite and may not have been strong enough to help Plaintiff off the floor. *See Estes v. Jack Eckerd Corp*, 360

S.E.2d 649, 650 (Ga. Ct. App. 1987). Additionally, if Plaintiff was fearful of Greenglass, she would not have waved her cane in Greenglass' face. Finally, Plaintiff remained in the unlocked room by her own choice. Unlike Williams who had employees actively blocking his path, Plaintiff would have only needed to open the unlocked door and walk out of the store. *See Food Lion*, 446 S.E.2d at 223-24. Therefore, Plaintiff has no false imprisonment claim to make because MegaMart did not detain her.

*B. In this jurisdiction, an establishment may defend against a false imprisonment claim by showing it was reasonable to believe the plaintiff was shoplifting, which MegaMart can show because Plaintiff set off the antishoplifting device.*

It was reasonable for MegaMart to detain Plaintiff because the antishoplifting device sounded when her bag passed through it. In Georgia, it is reasonable for an establishment with an antishoplifting device to detain a suspected shoplifter when the device was set off as the suspect was exiting the store and there was notice of the device posted. Ga. Code Ann. § 51-7-60 (2019); Ga. Code Ann. § 51-7-61(b)-(c) (2019); *Arnold v. Eckerd Drugs of Ga.*, 358 S.E.2d 632, 633-34 (Ga. Ct. App. 1987). It is still reasonable even if the device was set off by mistake or negligence of the establishment. *Estes v. Jack Eckerd Corp*, 360 S.E.2d 649, 651-52 (Ga. Ct. App. 1987). The Georgia Legislature established through O.C.G.A § 51-7-61 that the sounding of an antishoplifting device is sufficient reasonable cause to detain a suspected shoplifter. Ga. Code Ann. § 51-7-61(b)-(c) (2019). The Joint Stipulation of Facts states that Plaintiff's bag caused the antishoplifting device to go off in MegaMart. As the statute required, MegaMart had signs above the door notifying shoppers of the antishoplifting device. *See id.*

In *Arnold v. Eckerd Drugs of Ga.*, the plaintiff was exiting the store when the alarms went off and she realized she had accidentally left a pen in her pocket that she did not pay for. *Arnold*, 358 S.E.2d at 633. Even though she did not exit the store with the pen, and tried to put it back,

the Court of Appeals of Georgia still found the store was reasonable in both detaining her and having her arrested for attempted shoplifting. *Id.* at 633-34. There, the customer made a mistake, and did not intend to shoplift. *Id.* at 633. The Court of Appeals of Georgia still found the detention reasonable despite the mistake because the antishoplifting device was activated. *Id.* at 633-34. Here, Plaintiff had not left the store. Her bag went through the device as she fell. Despite having not committed the crime by bringing the items out of the store, MegaMart still acted reasonably as their actions mimicked Eckerd's actions by investigating and detaining a potential attempted shoplifter. *See id.* at 633.

In *Estes v. Jack Eckerd Corp.*, the Court of Appeals of Georgia held that the establishment's mistake in not deactivating a special tag on the bottle of shampoo did not interfere with the reasonable cause they had to investigate Estes for shoplifting when she activated the antishoplifting device. *Estes v. Jack Eckerd Corp*, 360 S.E.2d 649, 651-52 (Ga. Ct. App. 1987). Here, while checking out at MegaMart, Plaintiff used the self-checkout station; therefore, if there was a mistake that triggered the antishoplifting device, it could have come either from her use of the self-checkout station or from MegaMart's self-checkout machine itself. It was determined that the self-checkout machine had malfunctioned; however, like the mistake made by Jack Eckerd Corp., that does not affect MegaMart's reasonable detention of Plaintiff. *See id.* Therefore, MegaMart had reasonable justification to detain Plaintiff.

*C. The manner of Plaintiff's detention was reasonable within Georgia law because Greenglass did not touch Plaintiff.*

Plaintiff was detained in a reasonable manner because Greenglass did not touch Plaintiff as they walked to the back of the store. In this jurisdiction, because the facts are not in dispute, the Court can look to physical contact and verbal statements to determine if the manner of detention

was reasonable. Ga. Code Ann. § 51-7-60(1) (2019); Ga. Code Ann. § 51-7-61(b)-(c) (2019); *Brown v. Super Disc. Mkts.*, 477 S.E.2d 839, 840-41 (Ga. Ct. App. 1996); *Estes v. Jack Eckerd Corp*, 360 S.E.2d 649, 652 (Ga. Ct. App. 1987); *Colonial Stores, Inc. v. Fishel*, 288 S.E.2d 21, 23-24 (Ga. Ct. App. 1981). Store procedures are not dispositive. *Luckie v. Piggly-Wiggly Southern, Inc.*, 325 S.E.2d 844, 846 (Ga. Ct. App. 1984). In *Colonial Stores, Inc. v. Fishel*, the security guard accused the plaintiff of shoplifting and then handcuffed him to a container. *Colonial Stores, Inc.*, 288 S.E.2d at 22. The Court of Appeals of Georgia upheld a jury finding that Colonial Stores did not act reasonably throughout the situation, making them liable. *Id.* at 24.

In *Brown v. Super Disc. Mkts.*, the Court of Appeals of Georgia overturned a summary judgment ruling on the grounds that a jury could find the actions by the store to be unreasonable in the detention of the plaintiff. *Brown*, 477 S.E.2d at 840-41. There, employees had shoved the plaintiff into a candy rack, locked the door to the room where they held her, and prodded the plaintiff in the back as she was walking. *Id.* at 840. Additionally, the store verbally abused her and threatened to call child services to have her children taken away. *Id.*

The Court of Appeals of Georgia stated in *Estes v. Jack Eckerd Corp.* that although the manner of detention ended up being reasonable, the detention in front of other store patrons was not desirable, and it would be better to take place in private. *Estes v. Jack Eckerd Corp*, 360 S.E.2d 649, 652 (Ga. Ct. App. 1987).

Here, Greenglass did not touch Plaintiff in any way, at one point even offering to help her, unlike the security guards in both *Brown* and *Colonial Stores*. *See Brown*, 477 S.E.2d at 840; *Colonial Stores, Inc.*, 288 S.E.2d at 22. Both plaintiffs in those cases were restrained from leaving in some way while Plaintiff, here, was asked to wait in an unlocked room. *See Brown*,

477 S.E.2d at 840; *Colonial Stores, Inc.*, 288 S.E.2d at 22. Greenglass tried to make polite conversation with Plaintiff, unlike the employees in *Brown* who threatened and verbally abused the plaintiff. *See Brown*, 477 S.E.2d at 840. Greenglass took Plaintiff to a private room, unlike the employee in *Estes*, and that detention was found reasonable despite that defect. *See Estes*, 360 S.E.2d at 652.

The Court of Appeals of Georgia held in *Luckie v. Piggly-Wiggly Southern, Inc.* that an establishment's policies on dealing with potential shoplifters can neither prove nor disprove a reasonable manner of detention. *Luckie v. Piggly-Wiggly Southern, Inc.*, 325 S.E.2d 844, 846 (Ga. Ct. App. 1984). Here, Greenglass tried to take Plaintiff to the conference room as store policies prescribed, but it was being used. As *Luckie* states, this fact does not make the manner of detention unreasonable. *See Luckie*, 325 S.E.2d at 846. Therefore, MegaMart detained Plaintiff in a reasonable manner.

*D. The length of Plaintiff's detention was reasonable within Georgia law because MegaMart detained Plaintiff only long enough to investigate.*

MegaMart detained Plaintiff for a reasonable length of time because they were investigating the incident the entire time. In Georgia, a reasonable length of time for a lawful detention is no longer than necessary to complete an investigation into the circumstances surrounding the potential shoplifting. Ga. Code Ann. § 51-7-60(2) (2019); Ga. Code Ann. § 51-7-61(b)-(c) (2019); *Mitchell v. Lowe's Home Ctrs.*, 506 S.E.2d 381, 384 (Ga. Ct. App. 1998); *Colonial Stores, Inc. v. Fishel*, 288 S.E.2d 21, 23-24 (Ga. Ct. App. 1981). In *Mitchell v. Lowe's Home Ctrs.*, the Court of Appeals of Georgia held that the discrepancy in how long the plaintiff was detained was immaterial because the plaintiff testified that the manager had spent the entire time

resolving the matter. *Lowe's Home Ctrs.*, 506 S.E.2d at 384. The court found the detention of Mitchell lawful in part because the manager met the requirement of a reasonable detention. *Id.*

In *Colonial Stores, Inc. v. Fishel*, the Court of Appeals of Georgia also looked to what the store did while the plaintiff was detained and found that the jury was justified in finding the detention unreasonable because the manager did not investigate while Fishel was detained. *Colonial Stores, Inc.*, 288 S.E.2d at 22-23. This was especially troubling to the court because Fishel told the store's employees how they could find evidence he did not shoplift, but they still did not take any actions to do so, making the length of detention unreasonable. *Id.* at 22.

Here, thirty-five minutes elapsed between the time the alarm sounded, and when Plaintiff left the store. Plaintiff was in the room for thirty minutes, all of which were spent by MegaMart's employees on an investigation into the incident exactly as the manager in *Mitchell* had done. *See Lowe's Home Ctrs.*, 506 S.E.2d at 384. Despite Greenglass taking a personal call during that time, MegaMart's manager and technical assistant were still conducting the investigation and the phone call did not add to any time Plaintiff spent in the room. Unlike the manager in *Colonial Stores*, MegaMart's manager did not leave it to the police to conduct an investigation that he efficiently resolved. *See Colonial Stores, Inc.*, 288 S.E.2d at 23. Therefore, MegaMart detained Plaintiff for a reasonable length of time.

## CONCLUSION

MegaMart did not falsely imprison Plaintiff. MegaMart did not detain Plaintiff when they asked her to remain in an unlocked room. However, should the Court find MegaMart detained Plaintiff, that detention was reasonable in cause, manner, and length. MegaMart had reasonable cause to detain Plaintiff when she set off the anti-shoplifting device. MegaMart's employees acted in a reasonable manner during the detention because they never touched Plaintiff. The

length of the detention was reasonable as it lasted no longer than the time of the investigation into the matter. Therefore, MegaMart respectfully asks the Court to uphold its right to protect itself from shoplifters by granting the Motion for Summary Judgment.

## Applicant Details


| | |
|---|---|
| First Name | **Lexie** |
| Middle Initial | **Just** |
| Last Name | **Haralson** |
| Citizenship Status | **U. S. Citizen** |
| Email Address | **ljhrlson@memphis.edu** |
| Address | **Address**<br>Street<br>**67 Madison Ave, Apt 702**<br>City<br>**MEMPHIS**<br>State/Territory<br>**Tennessee**<br>Zip<br>**38103**<br>Country<br>**United States** |
| Contact Phone Number | **5012307876** |


## Applicant Education

| | |
|---|---|
| BA/BS From | **University of Arkansas-Fayetteville** |
| Date of BA/BS | **May 2019** |
| JD/LLB From | **The University of Memphis--Cecil C. Humphreys School of Law**<br>**http://www.memphis.edu/law/index.php** |
| Date of JD/LLB | **May 13, 2022** |
| Class Rank | **10%** |
| Law Review/Journal | **Yes** |
| Journal(s) | **The University of Memphis Law Review** |
| Moot Court Experience | **Yes** |
| Moot Court Name(s) | **Cecil C. Humphreys School of Law Freshman Moot Court**<br>**Cecil C. Humphreys School of Law Advanced Moot Court Competition** |

## Bar Admission

## Prior Judicial Experience

| | |
|---|---|
| Judicial Internships/ Externships | **Yes** |
| Post-graduate Judicial Law Clerk | **No** |

## Specialized Work Experience

## Recommenders

Brashier, Ralph
rbrashir@memphis.edu
901-678-3235
Kerley, Carrie
C.Kerley@memphis.edu
901-678-3494

## References

Magistrate Judge Tu M. Pham, Tu_Pham@tnwd.uscourts.gov, (901) 495-1351

Jason Schabinger, Jason_Schabinger@tnwd.uscourts.gov, (901) 495-1351

Lindsey Bell, lbell@millarjileslaw.com, (501) 268-8220

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**LEXIE J. HARALSON**
67 Madison Ave. Apt 702, Memphis, TN 38103
(501) 230-7876—ljhrlson@memphis.edu

The Honorable Elizabeth W. Hanes
U.S. Courthouse
701 East Broad Street
Richmond, VA 23219

RE: TERM LAW CLERKSHIP

Dear Magistrate Judge Hanes:

I am writing to express my interest in the clerkship position with the United States District Court for the Eastern District of Virginia. I am also sending my resume for your review. I would greatly appreciate the chance to employ the skill set I have acquired as a rising 3L by clerking in your chambers. A judicial clerkship offers an unparalleled opportunity to immerse oneself in the inner-workings of the judicial system.

Since I was old enough to drive, I knew that my passions were public service and the law. This fervor matured at the University of Arkansas where I had greater opportunity to aid those in need of a voice. I studied abroad in Greece assisting The NO Project in its effort to fight human trafficking. Further pursuing to engender change, I interned for United States Congressman Steve Womack during his crucial reelection campaign. After three years at the University of Arkansas, I graduated *summa cum laude* and started at the University of Memphis, Cecil C. Humphreys School of Law. During law school, I have received the Best Internal Memorandum award and Cali awards in Torts II, Appellate Advocacy, and Criminal Procedure. Recently, I was named the Symposium Editor of Volume 52 of *The University of Memphis Law Review*. This past summer, I had the privilege of externing for the Honorable Chief Magistrate Judge Tu M. Pham in the United States District Court for the Western District of Tennessee.

While my interest in public service led me to law school, I realize the best way to learn is through real-world experience. My time in Judge Pham's chambers not only imparted invaluable knowledge of the federal court system but it also honed my abilities as a researcher and writer. As a law clerk, I plan to use those skills to efficiently research and draft legal writings. An opportunity to clerk in your chambers would be an immeasurable honor.

I would be privileged to speak to you regarding this clerkship. Thank you for your time and consideration.

Sincerely,

Lexie J. Haralson

Lexie J. Haralson

**LEXIE J. HARALSON**
67 Madison Ave, Apt. 702, Memphis, TN 38103
ljhrlson@memphis.edu ◦ 501-230-7876

## EDUCATION

**UNIVERSITY OF MEMPHIS CECIL C. HUMPHREYS SCHOOL OF LAW**, J.D. Candidate, May 2022, GPA: 3.77, Top 6%
Honors: Best Internal Memorandum, Fall 2019
Cali Awards – Torts II, Criminal Procedure, Appellate Advocacy
Activities: Volume 52 *The University of Memphis Law Review*, Symposium Editor
Freshman Moot Court Competition, Participant 2020
Advanced Moot Court Competition, Participant 2020
Public Action Law Society, Volunteer & Alternative Spring Break Coordinator 2020
Access to Justice Committee of the Memphis Bar Association, Student Representative 2020
Student Ambassador, 2020
Peer Mentor, 2020
Alternative Spring Break, Participant, 2020
Advocacy Camp, Group Leader, 2020
Diversity, Equity, and Inclusion Committee; Association for Women Attorneys; Hispanic Law Student Association; Street Law, Member 2019-2021

**UNIVERSITY OF ARKANSAS** - B.A. in Political Science and Philosophy, May 2019
Honors: *summa cum laude*
Phi Beta Kappa
Departmental Honors – Political Science and Philosophy
Activities: Academic Committee Representative, Kappa Kappa Gamma (2016, 2019); University of Arkansas, Student Ambassador**,** Fayetteville, AR (2017-2018); Studied abroad, Greece (2017)

## EXPERIENCE

**THE HONORABLE TU M. PHAM, CHIEF UNITED STATES MAGISTRATE JUDGE**
**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE**
*Extern*, Memphis, TN Summer 2020
Prepared a circuit survey of whether the presence of coronavirus at detention facilities constitutes grounds for reconsideration of pretrial release under the Bail Reform Act, codified 18 U.S.C. § 3142.
Assisted in drafting a report and recommendation on a Rule 12(e) motion for more definite statement on a *Pro Se* plaintiff's Title VII retaliation claim against a major corporation.
Researched and analyzed a Rule 15 motion to amend by a *Pro Se* plaintiff.

**THE ATWELL LAW FIRM,** Fayetteville, AR Spring 2019
*Intern*
Provided support and assistance to attorneys by filing pleadings, communicating with clients, completing legal research, submitting paperwork, and aiding in courtroom preparation.

**U.S. REPRESENTATIVE STEVE WOMACK,** Rogers, AR 2017-2018
*Intern*
Communicated with constituents about public policy and issues affecting Arkansans while learning how a Congressional office functions.

## VOLUNTEER ACTIVITIES

**Washington Elementary,** *Volunteer*, Fayetteville, AR 2016-2019
Worked with high-risk children
**The NO Project,** *Ambassador*, Athens, Greece; Arkansas 2017
Coordinated fundraisers to spread awareness for the fight against sex trafficking and modern slavery
**Salvation Army**, *Volunteer*, Athens, Greece 2017
Provided aid to Syrian refugees through the Salvation Army

OSCAR / Haralson, Lexie (The University of Memphis--Cecil C. Humphreys School of Law)



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UNIVERSITY OF ARKANSAS



# Official Transcript

**Name:** Lexie Haralson
**Student ID:** 010763223

Print Date: 2021-03-12
SSN: 429939151
Birthdate: 05-29(MM-DD)
Institution Info: The University of Arkansas
Registrar's Office
141 Uptown Campus
Fayetteville, AR 72701
Institution ID: 001108
Send To: LEXIE HARALSON
67 Madison Ave Apt 702
Memphis, TN 38103-6105

## Beginning of Undergraduate Record
**Fall 2016**

Fulbright Col of Arts & Sci
Political Science Major
Honors Program Honors
Honors Program Option
Pre-Law Preparation

Term Honor: Chancellor's and Dean's List

| Course | | Description | Attempted | Grade | Points |
|---|---|---|---|---|---|
| ARHS | 1003H | HNRS BASIC COURSE: ART LECTURE | 3.00 | A | 12.000 |
| HIST | 2003 | HIST AMER PEOPLE TO 1877 | 3.00 | A | 12.000 |
| MLIT | 1003 | MUSIC LECTURE | 3.00 | A | 12.000 |
| PLSC | 2813 | INTRO INTERNATL RELATIONS | 3.00 | A | 12.000 |
| SOCI | 2013 | GENERAL SOCIOLOGY | 3.00 | A | 12.000 |
| UNIV | 1001H | HON UNIVERSITY PERSPECTIVES | 1.00 | A | 4.000 |

Test Credits Applied Toward Fulbright Col of Arts & Sci

| Course | | Description | Attempted | Grade | Points |
|---|---|---|---|---|---|
| ENGL | 1020 | ENGL 1023 EXEMPTION | 0.00 | -- | 0.000 |
| ENGL | 1010 | ENGL 1013 EXEMPTION | 0.00 | -- | 0.000 |
| PLSC | 2003 | AP: AMER NATIONAL GOVT | 3.00 | CR | 0.000 |

**Transfer Credit from Arkansas State University At Beebe**
Applied Toward Fulbright Col of Arts & Sci Program

| Course | | Description | Earned | Grade | | Term |
|---|---|---|---|---|---|---|
| COMM | 1313T | PUBLIC SPEAKING | 3.00 | A | FALL | 2015 |
| ENGL | 1023 | COMPOSITION II | 3.00 | A | SPR | 2015 |
| ENGL | 1013 | COMPOSITION I | 3.00 | A | FALL | 2014 |
| MATH | 1203 | COLLEGE ALGEBRA | 3.00 | A | FALL | 2014 |
| SPAN | 1013 | ELEMENTARY SPANISH II | 3.00 | A | SPR | 2015 |
| SPAN | 2013 | INTERMEDIATE SPANISH II | 3.00 | A | SPR | 2016 |
| SPAN | 2003 | INTERMEDIATE SPANISH I | 3.00 | A | FALL | 2015 |
| SPAN | 1003 | ELEMENTARY SPANISH I | 3.00 | A | FALL | 2014 |
| WLIT | 1123 | WORLD LITERATURE II | 3.00 | A | SPR | 2016 |
| WLIT | 1113 | WORLD LITERATURE I | 3.00 | A | FALL | 2015 |

| | | | Attempted | Earned | Points |
|---|---|---|---|---|---|
| Term GPA | 4.000 | Term Totals | 16.00 | 16.00 | 64.000 |
| Cum GPA | 4.000 | Cum Totals | 16.00 | 49.00 | 64.000 |

## Spring 2017

Fulbright Col of Arts & Sci
Political Science Major
Honors Program Honors
Honors Program Option
Pre-Law Preparation

Term Honor: Chancellor's and Dean's List

OSCAR / Haralson, Lexie (The University of Memphis--Cecil C. Humphreys School of Law)



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## Official Transcript

Name: Lexie Haralson
Student ID: 010763223

| Course | | Description | Attempted | Grade | Points |
|---|---|---|---|---|---|
| HIST | 1113H | HONORS INST & IDEAS WORLD CIV | 3.00 | A | 12.000 |
| HIST | 2013 | HIST/AMER PEOPLE 1877-PR | 3.00 | A | 12.000 |
| PHIL | 2003 | INTRO TO PHILOSOPHY | 3.00 | A | 12.000 |
| PLSC | 2013 | INTRO TO COMPARATIVE POLITICS | 3.00 | A | 12.000 |
| PLSC | 3153 | PUBLIC POLICY | 3.00 | A | 12.000 |

| | | | Attempted | Earned | Points |
|---|---|---|---|---|---|
| Term GPA | 4.000 | Term Totals | 15.00 | 15.00 | 60.000 |
| Cum GPA | 4.000 | Cum Totals | 31.00 | 64.00 | 124.000 |

**Fall 2017**

Fulbright Col of Arts & Sci
Political Science Major
Honors Program Honors
Honors Program Option
Pre-Law Preparation

Term Honor: Chancellor's and Dean's List

| Course | | Description | Attempted | Grade | Points |
|---|---|---|---|---|---|
| ANTH | 1011M | HNRS INTRO TO BIOL ANTHRO LAB | 1.00 | A | 4.000 |
| ANTH | 1013H | HNRS INTRO TO BIOL ANTHRO | 3.00 | A | 12.000 |
| PHIL | 2203 | LOGIC | 3.00 | A | 12.000 |
| PLSC | 3103 | PUBLIC ADMINISTRATION | 3.00 | A | 12.000 |
| PLSC | 3603 | SCOPE/MTHDS OF POLITICAL SCI | 3.00 | A | 12.000 |
| PLSC | 4883 | POLITICS OF INTERNATIONAL LAW | 3.00 | A | 12.000 |

| | | | Attempted | Earned | Points |
|---|---|---|---|---|---|
| Term GPA | 4.000 | Term Totals | 16.00 | 16.00 | 64.000 |
| Cum GPA | 4.000 | Cum Totals | 47.00 | 80.00 | 188.000 |

**Spring 2018**

Fulbright Col of Arts & Sci
Political Science Major
Honors Program Honors
Pre-Law Preparation
Philosophy Minor

Term Honor: Chancellor's and Dean's List

| Course | | Description | Attempted | Grade | Points |
|---|---|---|---|---|---|
| PHIL | 4033 | MODERN PHILOSOPHY | 3.00 | A | 12.000 |
| PHYS | 1021L | PHYSICS & HUMAN AFFAIRS LAB | 1.00 | A | 4.000 |
| PHYS | 1023 | PHYSICS & HUMAN AFFAIRS | 3.00 | A | 12.000 |
| PLSC | 4203 | AMERICAN POLITICAL PARTIES | 3.00 | A | 12.000 |
| PLSC | 4513 | CREATING DEMOCRACIES | 3.00 | A | 12.000 |
| PLSC | 4573 | GENDER AND POLITICS | 3.00 | A | 12.000 |

| | | | Attempted | Earned | Points |
|---|---|---|---|---|---|
| Term GPA | 4.000 | Term Totals | 16.00 | 16.00 | 64.000 |
| Cum GPA | 4.000 | Cum Totals | 63.00 | 96.00 | 252.000 |

**Summer 2018**

Fulbright Col of Arts & Sci
Political Science Major
Honors Program Honors
Pre-Law Preparation
Philosophy Minor

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## Official Transcript

Name: Lexie Haralson
Student ID: 010763223

| Course | | Description | Attempted | Grade | Points |
|---|---|---|---|---|---|
| AAAE | 300V | STUDY ABROAD LEAD ABROAD/ENGLAND | 3.00 | R | 0.000 |

| | | | Attempted | Earned | Points |
|---|---|---|---|---|---|
| Term GPA | 0.000 | Term Totals | 0.00 | 0.00 | 0.000 |
| Cum GPA | 4.000 | Cum Totals | 63.00 | 96.00 | 252.000 |

### Fall 2018

Fulbright Col of Arts & Sci
Political Science Major
Honors Program Honors
Pre-Law Preparation
Philosophy Minor

Term Honor: Chancellor's and Dean's List

| Course | | Description | Attempted | Grade | Points |
|---|---|---|---|---|---|
| FINN | 3003 | PERSONAL FINANCIAL MGMT | 3.00 | A | 12.000 |
| PHIL | 3103 | ETHICS & THE PROFESSIONS | 3.00 | A | 12.000 |
| PHIL | 4143 | PHILOSOPHY OF LAW | 3.00 | A | 12.000 |
| PLSC | 3203 | INTRO TO LEGAL STUDIES | 3.00 | A | 12.000 |
| PLSC | 3233 | THE AMERICAN CONGRESS | 3.00 | A | 12.000 |

| | | | Attempted | Earned | Points |
|---|---|---|---|---|---|
| Term GPA | 4.000 | Term Totals | 15.00 | 15.00 | 60.000 |
| Cum GPA | 4.000 | Cum Totals | 78.00 | 111.00 | 312.000 |

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MAR 12 2021

### Spring 2019

Fulbright Col of Arts & Sci
Political Science Major
Pre-Law Preparation
Philosophy Minor

| Course | | Description | Attempted | Grade | Points |
|---|---|---|---|---|---|
| PBHL | 2101 | SPECIAL TOPICS YOGA I | 1.00 | A | 4.000 |
| PBHL | 2101 | SPECIAL TOPICS YOGA II | 1.00 | A | 4.000 |
| PEAC | 1901 | SPECIAL TOPICS WOMEN'S SELF DEFENSE | 1.00 | A | 4.000 |
| PHIL | 3443 | ANIMAL MINDS | 3.00 | A | 12.000 |
| SOCI | 2033 | SOCIAL PROBLEMS | 3.00 | A | 12.000 |

| | | | Attempted | Earned | Points |
|---|---|---|---|---|---|
| Term GPA | 4.000 | Term Totals | 9.00 | 9.00 | 36.000 |
| Cum GPA | 4.000 | Cum Totals | 87.00 | 120.00 | 348.000 |

### Degrees Awarded

Degree: Bachelor of Arts
Confer Date: 2019-05-11
Plan: Political Science
Plan: Philosophy - Minor

### Undergraduate Career Totals

| | | | | | |
|---|---|---|---|---|---|
| Cum GPA: | 4.000 | Cum Totals | 87.00 | 120.00 | 348.000 |

I CERTIFY THIS IS A TRUE AND OFFICIAL COPY OF THE ORGINAL ACADEMIC RECORD.

Mike S. Harris
ADMINISTRATIVE SUPPORT SUPERVISOR

End of Official Transcript

State of Arkansas
County of Washington

On this day, March 12, 2021, I hereby certify that the signature above is the true and official signature of Mike S. Harris.

April McDowell, Notary Public

APRIL MCDOWELL
NOTARY PUBLIC
WASHINGTON CO, ARKANSAS
COMM EXPIRES 10- 09- 2028
COMMISSION #12705810

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April 5, 2021

**Re: Recommendation for Lexie Haralson**

To Whom It May Concern:

Lexie Haralson, who will soon complete her second year at The University of Memphis School of Law, is applying for a judicial clerkship in your court following her graduation. I enthusiastically give Lexie my very highest recommendation!

Lexie was a student in my Property I and Property II courses during her first year of law school. Throughout the fall semester, she was the only student in the course who achieved a perfect score on each of the intermediate examinations I gave. Indeed, *she is the only student I have had in 30 years of teaching who achieved perfect scores on every intermediate examination*. Her accomplishment is even more noteworthy because Property I includes the notoriously difficult law of future interests—an area of law filled with arcana, such as the Rule Against Perpetuities. (Note that because of the pandemic, students only received pass/fail marks in the spring semester. I have no doubt that Lexie would have earned a terrific grade in Property II had we not moved to a pass/fail system.)

Lexie's law school and undergraduate academic records demonstrate her keen intelligence, dedication, and diligence. For example, I note that Lexie interned for a member of the United States House of Representatives while remaining a full-time student at the University of Arkansas and maintaining a 4.0 GPA. Adding to this remarkable accomplishment, I should emphasize not only that Lexie graduated *summa cum laude*, but also that she did so *in three years*.

In both Property I and II, Lexie was a joy to teach. My conversations with several of her other professors indicate that they are similarly impressed with Lexie. Unsurprisingly, Lexie excelled in her other courses and ended her first year of law school in the top ten percent of her class. Notably, she earned the Cali Award in Torts II as having the top performance in that course.

Although I have not had the privilege of working with Lexie on a writing project, it is evident that she is a talented writer, for she earned a coveted spot on the *The University of Memphis Law Review*. She will also serve on the editorial board during her third year of law school. I am delighted to say that Lexie will also serve as my research assistant in 2021-2022.

I'll end as I began: I enthusiastically give Lexis my very highest recommendation. The admirable resolve that makes her an exceptional student will also make her an excellent clerk. I look forward to what the future holds for Lexie, for she can do anything she sets her mind to.

I apologize for not placing this letter on law school letterhead with my handwritten signature. Because of the pandemic, I am teaching my courses out of state, and I currently have limited ability to print and scan.

Please feel free to contact me if you have any questions regarding this recommendation.

Sincerely,
Ralph C. Brashier
Cecil C. Humphreys Professor of Law
The University of Memphis
rbrashir@memphis.edu

April 05, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

It is with great pleasure that I recommend Ms. Lexie Haralson for the Term Law Clerk Position. I was Ms. Haralson's professor in Legal Methods I and II and Family Law. Based on my interactions with Ms. Haralson during her law school career, I could not recommend her more highly.

As a student, Ms. Haralson was a self-motivated, high-achieving, and engaged member of my classes. I could rely on Ms. Haralson to be prepared for class, to have a good attitude, to ask thoughtful questions, and to meet deadlines. An example of Ms. Haralson's passion for learning is when she volunteered to research the subsequent history of a case in our Family Law casebook so that she could report back to the class on the present status of the parties. In addition, Ms. Haralson is not hesitant to form mentoring relationships with her professors outside of class. This balance of self-direction coupled with an awareness of when guidance is helpful is rare in law students and, in my opinion, an imperative skill for young lawyers.

Ms. Haralson's work product, specifically her legal writing, was always superior in my classes. In my Legal Methods course, she received the Outstanding Memorandum Award. Her excellent writing skills are further evidenced by her membership on The University of Memphis Law Review.

In short, I believe Ms. Haralson would make an excellent Judicial Clerk. If you have any further questions, feel free to contact me at (901) 678-3494.

Sincerely,

Professor Carrie Kerley
Assistant Professor of Law
Cecil C. Humphreys School of Law

**LEXIE J. HARALSON**
67 Madison Ave., Apt. 702 Memphis, TN 38103
501-230-7876—ljhrlson@memphis.edu

**WRITING SAMPLE**

As an extern for the United States District Court for the Western District of Tennessee, I prepared the attached memorandum for Chief Magistrate Judge Tu M. Pham. The circuit survey examined whether the presence of coronavirus at a detention facility constituted grounds for the reconsideration of a party's pretrial release under the Bail Reform Act, codified 18 U.S.C. § 3142. I have received permission from my employer to use this memorandum as my writing sample.

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TENNESSEE**
**WESTERN DIVISION**

TO: Jason Schabinger

FROM: Lexie Haralson

DATE: June 25, 2020

RE: Response to COVID-19 Circuit Survey

## QUESTION PRESENTED

Whether in the First, Second, Third, Fourth, Fifth, and Sixth Circuits, the COVID-19 pandemic constitutes new material information within the meaning of 18 U.S.C. § 3142(f) of the Bail Reform Act, and what factors are relevant in determining if COVID-19 is a "compelling reason" for a defendant's pretrial release under 18 U.S.C. § 3142(i) of the Bail Reform Act?

## BRIEF ANSWER

### 1. COVID-19 as New Material Information under 18 U.S.C. § 3142(f)

Even if a court finds that the COVID-19 pandemic constitutes new material information under § 3142(f), the courts, generally, do not grant a defendant's pretrial release unless he or she establishes through "(1) clear and convincing evidence that he or she is no longer a danger to the community, or (2) by a preponderance of the evidence that he or she no longer poses a serious risk of flight."

### 2. COVID-19 as a "Compelling Reason" for Release under § 3142(i)

The First, Second, Third, Fourth, Fifth, and Sixth Circuits' Courts of Appeals have not established lists of factors to apply in determining if the COVID-19 pandemic constitutes a "compelling reason" for a defendant's pretrial release under 18 U.S.C. § 3142(i).

## DISCUSSION

As a result of the heightened risks of contracting COVID-19 in detention facilities, many defendants who are detained pending trial have filed motions seeking pretrial release under two main provisions of the Bail Reform Act, codified at 18 U.S.C. § 3142. See, e.g., United States v. Clark, No. 19-40068-01-HLT, 2020 WL 1446895, at *8-9 (D. Kan. Mar. 25, 2020). The primary sections being used for pretrial release motions are 18 U.S.C. § 3142(f) and (i). Id.

**1. COVID-19 as New Material Information under § 3142(f)**

Under 18 U.S.C. § 3142(f), a detention hearing:

> may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

18 U.S.C. § 3142(f). Defendants have argued that, under § 3142(f), the COVID-19 pandemic constitutes new material information that justifies granting a defendant's pretrial release. United States v. Tawfik, No. 17-cr-20183-2, 2020 WL 1672655, at *1-2 (E.D. Mich. Apr. 6, 2020). Information is "new and material" when a "circumstance[] has truly changed, something unexpected has happened, or a significant event has occurred." United States v. Zhou, Nos. 2:19-CR-163(1) & (2), 2020 WL 1643634, at *6, *8 (S.D. Ohio Apr. 2, 2020) (citing United States v. Jerdine, No. 1:08 CR 00481, 2009 WL 4906564, at *3 (N.D. Ohio Dec. 18, 2009)).

Although the First Circuit Court of Appeals has not addressed whether the COVID-19 pandemic constitutes new material information under § 3142(f), many district courts in the circuit found that even though the COVID-19 pandemic may constitute new material information, the courts may still deny a defendant's motion for pretrial release. United States v. Fontanez, No. 1:19-10421-DPW, 2020 WL 2475648, at *1 (D. Mass. May 13, 2020); United States v. Perez, No. 15-10256-RGS, 2020 WL 1991161, at *4-5 (D. Mass. Apr. 22, 2020); United States v. Ramos, 18-CR-30009-FDS, 2020 WL 1478307, at *1-2 (D. Mass. Mar. 26, 2020). In their evaluation of whether the COVID-19 pandemic constitutes new material information, these courts considered whether the defendant was within a category vulnerable to COVID-19 complications and whether the detention facility sufficiently mitigated the risks of contracting COVID-19 and could provide the requisite medical care to its detainees. See Fontanez, 2020 WL 2475648, at *1; Perez, 2020 WL 1991161, at *4-5; Ramos, 2020 WL 1478307, at *1-2. But, for a court to grant a defendant's pretrial release under § 3142(f), the defendant must rebut the presumption that "there is no condition or combination of conditions that will reasonably assure the safety of the community or appearance of a defendant in court," 18 U.S.C. § 3142(e)(3)(A). See Fontanez, 2020 WL 2475648, at *1; Perez, 2020 WL 1991161, at *4-5; Ramos, 2020 WL 1478307, at *1-2. Thus, district courts in the First Circuit generally will not find that the COVID-19 pandemic constitutes new material information unless the defendant first rebuts the presumption that he or she is a danger to society or a flight risk.

The Second Circuit Court of Appeals has not addressed whether the COVID-19 pandemic constitutes new material information under § 3142(f). The district courts in the circuit reached differing conclusions as to whether the COVID-19 pandemic constitutes new material information under § 3142(f). Compare United States v. Whyte, No. 3:19-cr-64-1 (VLB), 2020 WL 1911187, at *4 (D. Conn. Apr. 8, 2020); and United States v. Jones, S1 19 Cr. 125 (VSB), 2020 WL 1934997, at *4, *6 (S.D.N.Y. Apr. 22, 2020). Some courts have concluded that § 3142(f) analysis is not applicable to the risks that the COVID-19 pandemic poses to a defendant, as § 3142(f) analysis generally focuses on issues regarding the risk of harm to others and the community, not the risk of harm to a defendant. Whyte, 2020 WL 1911187, at *4. Conversely, other courts found that if a defendant failed to present clear and convincing evidence to rebut the presumption that he or she is a flight risk or a danger to the community, then the COVID-19 pandemic may not constitute new material information, and a court may not grant the defendant's pretrial release. See Whyte, 2020 WL 1911187, at *4. To determine whether the defendant is still a flight risk or a danger to community, the district courts in this circuit analyzed the circumstances of a defendant's case under the 18 U.S.C. § 3142(g) factors, namely: "(1) the nature and circumstances of the offense charged; (2) the weight of evidence against a defendant; (3) a defendant's history and characteristics; and (4) a defendant's danger to the community." Id. Moreover, at least one district court held that if a defendant asserts merely speculative fears of the generalized risks that the COVID-19 pandemic may pose to his or her health, then that assertion may be enough for the COVID-19 pandemic to constitute new material information under § 3142(f). Jones, 2020 WL 1934997, at *4, *6. Thus, district courts in the Second Circuit are not unified as to whether the COVID-19 pandemic constitutes new material information under § 3142(f).

The Third Circuit Court of Appeals held that for the COVID-19 pandemic to constitute new material information, a defendant must rebut the presumption that he or she is a danger to the community or a flight risk and establish membership in a category vulnerable to COVID-19 complications. United States v. Roeder, 807 F. App'x 157, 2020 WL 1545872, at *3 (3d. Cir. Apr. 1, 2020). Along with the factors used by the Third Circuit Court of Appeals, district courts within the Third Circuit have also considered the condition of the detention facility and if it can provide the requisite healthcare to its detainees. United States v. Veras, 3:19-CR-010, 2020 WL 1675975 at *2 (M.D. Pa. Apr. 6, 2020). If a defendant is within a vulnerable category and the facility has not sufficiently mitigated the defendant's COVID-19 risks, then the COVID-19 pandemic may constitute new material information, as the "incredible magnitude and extreme health risks associated with COVID-19" make it immensely dangerous to

detainees. Id. Thus, if the Third Circuit Court of Appeals and the district courts' factors are satisfied, the COVID-19 pandemic may constitute new material information.

Although the Fourth Circuit Court of Appeals has not addressed whether the COVID-19 pandemic constitutes new material information under § 3142(f), the district courts within the circuit held that the COVID-19 pandemic, in certain situations, may constitute new material information under § 3142(f). United States v. Martin, No. PWG-19-140-13, 2020 WL 1274857, at *2, *4 (D. Md. Mar. 17, 2020); United States v. Williams, No. 5:19-CR-342-FL-2, 2020 WL 2404680, at *2-3 (E.D. N.C. May 12, 2020). While the district courts in the Fourth Circuit recognize "the unprecedented magnitude of the COVID-19 pandemic and acknowledge that it may constitute new information warranting a reconsideration of a detention order," these courts require that a defendant must first rebut the presumption through "clear and convincing evidence" that there are no conditions of release that will reasonably assure the safety of the community and "by a preponderance of evidence" that there are no conditions of release that will reasonably assure a defendant's appearance as required. Williams, 2020 WL 2404680, at *2-3 (quoting United States v. Ali, No. CR ELH-19-0280, 2020 WL 2306456, at *1 (D. Md. May 8, 2020)); Martin, 2020 WL 1274857, at *2, *4. To determine if a defendant has successfully rebutted the presumption, the district courts analyzed the circumstances of defendants' cases under the 18 U.S.C. § 3142(g) factors. See, e.g., Williams, 2020 WL 2404680, at *2-3; Martin, 2020 WL 1274857, at *2, *4. When determining if the COVID-19 pandemic constitutes new material information, the district courts in this circuit have also considered the defendant's health condition(s) and the present condition of the detention facility where the defendant is housed. See, e.g., Williams, 2020 WL 2404680, at *2-3; Martin, 2020 WL 1274857, at *2, *4. If a defendant fails to establish that there are conditions of release that would reasonably assure the safety of the community and his or her appearance as required, then the defendant's vulnerable health condition is insufficient on its own to justify release. See, e.g., Williams, 2020 WL 2404680, at *2-3; Martin, 2020 WL 1274857, at *2, *4. The courts also recognize that if they do not consider whether the COVID-19 pandemic constitutes new material information, then due process concerns may be triggered, as the defendant may argue he was "subjected to conditions of confinement that forced him to be exposed to serious illness." Martin, 2020 WL 1274857, at *2, *4. Thus, the Fourth Circuit's district courts have determined that the COVID-19 pandemic may constitute new material information under § 3142(f), but a defendant must first rebut the presumption under 18 U.S.C. § 3142(e)(3)(A) and, then, satisfy the district courts' other requisite factors.

In United States v. Barton, the Fifth Circuit Court of Appeals implied that the COVID-19 pandemic cannot constitute new material information. See United States v. Barton, 804 F. App'x, 295, 296 (5th Cir. May 13, 2020). The Court of Appeals reasoned that if a defendant has previously been denied pretrial release, then "there are *no* conditions of release," including the COVID-19 pandemic, that can reasonably assure the defendant's appearance in court or the safety of society. Barton, 804 F. App'x at 296. The district courts in this circuit similarly held that a defendant's concerns of contracting COVID-19 due to the institutional features of detention facilities would not "typically factor into the analysis of whether to reopen a detention determination under § 3142(f)," as § 3142(f) analysis generally focuses on "whether conditions can be set to reasonably assure the safety of the community and a defendant's appearance in court not the risk of harm to a defendant." United States v. Dunn, No. 3:19-CR-503-X, 2020 WL 1862567, at *2-3 (N.D. Tex. Apr. 13, 2020) (citing United States v. Terrone, No. 3:19-CR-00058-RCJ-CLB, 2020 WL 1844793, at *5 (D. Nev. Apr. 10, 2020)). Thus, in the Fifth Circuit, the COVID-19 pandemic likely cannot constitute new material information.

The Sixth Circuit Court of Appeals has not directly addressed whether the COVID-19 pandemic constitutes new material information under § 3142(f), and district courts in this circuit do not agree as to whether the COVID-19 pandemic constitutes new material information. Zhou, Nos. 2:19-CR-163(1) & (2), 2020 WL 1643634, at *6, *8; Tawfik, No. 17-cr-20183-2, 2020 WL 1672655, at *2-3; United States v. Shelton, No. 3:19-cr-14, 2020 WL 1815941, at *2 (W.D. Ky. Apr. 9, 2020). Some district courts have held that the COVID-19 pandemic cannot constitute new material information under § 3142(f) unless a defendant establishes that he or she is no longer a danger to the community or a flight risk; his or her health, as a member of a vulnerable category, is at a heightened risk for COVID-19 complications; and that his detention facility has not sufficiently mitigated his risk of contracting COVID-19. Shelton, 2020 WL 1815941, at *2. When determining if "COVID-19 is a material change of circumstances that warrants a renewal evaluation of a prior detention order," other district courts in the Sixth Circuit have been guided by the Clark factors, established by the District Court of Kansas. Tawfik, 2020 WL 1672655, at *2-3. The Clark factors are: "(1) the original grounds for a defendant's pretrial detention; (2) the specificity of a defendant's stated COVID-19 concerns; (3) the extent to which the proposed release plan is tailored to mitigate or exacerbate other COVID-19 risks to the defendant; and (4) the likelihood that the defendant's proposed plan would increase COVID-19 risks to others." Clark, 2020 WL 1446895, at *8-9. So, to determine whether the COVID-19 pandemic constitutes new material information in those districts, the courts analyze whether the defendant is still a flight risk or a danger to the

community; has a preexisting health condition that falls within a category vulnerable to COVID-19 complications; is housed in a detention facility that has insufficiently mitigated his or her risk of contracting COVID-19; whether the proposed plan specifies how the defendant's release will mitigate his or her chances of contracting COVID-19; and whether the proposed plan ensures that the defendant's release will not increase the risk of others contracting COVID-19. Id. Still, other district courts held that the COVID-19 pandemic does not constitute new material information because a defendant's risk of harm does not "usually bear on" § 3142(f) analysis, so a defendant's general concerns of the "heightened COVID-19 risks in detention facilities is not a factor into which § 3142(f) analysis would focus." Zhou, 2020 WL 1643634, at *6, *8. Thus, the Sixth Circuit's district courts' holdings varied greatly as to whether the COVID-19 pandemic constitutes new material information.

**2. COVID-19 as a "Compelling Reason" for Release under § 3142(i)**

A defendant who has been ordered detained pending trial and seeks pretrial release may also file a motion for release under 18 U.S.C. § 3142(i). Under 18 U.S.C. § 3142(i), a:

> judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

18 U.S.C. § 3142(i). § 3142(i) permits courts to release pretrial detainees for a "compelling reason" without revisiting a prior detention determination. United States v. Brown, No. 3:19-CR-00131-GNS, 2020 U.S. Dist. LEXIS 68884, at *4-5 (W.D. Ky. Apr. 20, 2020). Under § 3142(i), a defendant has the burden to establish that, as a matter of law, there is a "compelling reason" that warrants a defendant's "necessary" pretrial release. United States v. Smoot, No. 2:19-CR-20, 2020 U.S. Dist. LEXIS 55382, at *4-5 (S.D. Ohio Mar. 30, 2020). As a result of the COVID-19 pandemic, defendants are now arguing that the danger that COVID-19 poses to their health constitutes a "compelling reason" for release under 18 U.S.C. § 3142(i). Id.

Although the First Circuit Court of Appeals has not addressed whether the COVID-19 pandemic constitutes a "compelling reason" for a defendant's pretrial release under § 3142(i), several district courts in the First Circuit have taken on this issue. See United States v. Le, No. 19-10199-RWZ, 2020 WL 2563181, at *1-3 (D. Mass. May 6, 2020); United States v. Marrero, No. 19-10459-RWZ, 2020 WL 2520109, at *1-2 (D. Mass. May 4, 2020). To determine whether the COVID-19 pandemic constitutes a "compelling reason" for a defendant's pretrial release under § 3142(i), some district courts weigh an individual defendant's health concerns against the Bail Reform Act factors under 18 U.S.C. § 3142(g)(1)-(4), i.e. "(1) the nature and circumstances of the offense charged; (2) the weight of evidence

against a defendant; (3) a defendant's history and characteristics; and (4) a defendant's danger to the community." Marrero, 2020 WL 2520109, at *1-2. In their analysis of the § 3142(g) factors, the courts have generally found that if a defendant was charged with an offense listed under 18 U.S.C. § 3142(f), then that factor will weigh against release. Id. Ultimately, if the risk that the COVID-19 pandemic poses to a defendant's health does not outweigh the § 3142(g) factors, then COVID-19 is likely not a "compelling reason" for pretrial release under § 3142(i). Id. But, at least one court found that if the § 3142(g) factors weigh in favor of release; the defendant's detention facility has not sufficiently mitigated the defendant's risk of contracting COVID-19; and the defense established strict conditions of release, then the COVID-19 pandemic may constitute a "compelling reason" for the defendant's pretrial release. Le, 2020 WL 2563181, at *1-3. Thus, in the First Circuit, the COVID-19 pandemic may be a "compelling reason" for pretrial release, but the circumstances of an individual's case influence the outcome of the proceeding greatly.

The Second Circuit Court of Appeals has not provided a list of factors for determining whether the COVID-19 pandemic constitutes a "compelling reason" for a defendant's pretrial release, so there is vast variation amongst its district courts. United States v. Stephens, 15-cr-95 (AJN), 2020 WL 1295155, at *3 (S.D.N.Y. Mar. 19, 2020). At least one district court found that if the COVID-19 pandemic "poses too great an obstacle for a defendant to prepare his defense," or if the defendant has a "serious medical condition that warrants release under § 3142(i), then the COVID-19 pandemic may constitute a "compelling reason" for pretrial release. Stephens, 2020 WL 1295155, at *3; See United States v. Hernandez, No. 19 Cr. 169 (VM), 2020 WL 15031106, at *1 (S.D.N.Y. Mar, 30, 2020) (finding that COVID-19 may constitute a compelling reason for release if a defendant falls within a category vulnerable to a substantially greater risk of complications should he contract COVID-19); United States v. Perez, 19 Cr. 297 (PAE), 2020 WL 1329225, at *2 (S.D.N.Y. Mar. 19, 2020) (determining that COVID-19 is a "compelling reason because of the serious health risks it poses to the defendant and 'other risk factors'"). The same district court alternatively used a three factor test, which weighed the § 3142(g) factors against the increased risks that COVID-19 poses to a defendant's health and the state of the detention facility to determine if the COVID-19 pandemic is a "compelling reason" for a defendant's pretrial release. United States v. Gumora, 20-CR-144 (VSB), 2020 WL 1862361, at *13-15 (S.D.N.Y. Apr. 14, 2020). Other district courts found that the use of "compelling reason" under § 3142(i) is rare and "permits release sparingly for situations such as when a defendant is not a danger to the community or flight risk and is suffering from a terminal illness." United States v. Hamilton, 19-CR-54-01 (NGG), 2020 WL 1323036, at *2 (E.D.N.Y. Mar. 20, 2020). Comparatively, at least one court in the circuit weighed the original grounds for the defendant's pretrial

detention; the defendant's medical conditions and evidence provided of such; the extent to which the proposed release plan is tailored to mitigate or exacerbate other COVID-19 risks to the defendant; and the likelihood that the defendant's proposed plan would increase COVID-19 risks to others" to determine if the COVID-19 pandemic constitutes a compelling reason for pretrial release. Whyte, 2020 WL 1911187, at *4. Thus, the factors relevant in determining if the COVID-19 pandemic is a "compelling reason" for pretrial release differ greatly amongst the Second Circuit's district courts.

The Third Circuit Court of Appeals held that the general risk of contracting COVID-19 due to the institutional features of detention facilities is not enough on its own to make the COVID-19 pandemic a "compelling reason" for pretrial release. Roeder, 807 F. App'x 157, 2020 WL 1545872, at *3. So a defendant must evidence a specific threat that contracting COVID-19 poses to his or her health. Id. Conversely, the factors that the district courts deem relevant in determining if the COVID-19 pandemic constitutes a "compelling reason" for pretrial release under § 3142(i) vary significantly. Compare United States v. Hunter, No. 19-CR-620 (JAD), 2020 WL 2537579, at *4 (D. N.J. May 19, 2020); and United States v. Ortiz, No. 1:18-CR-00134, 2020 WL 1904478, at *6 (M.D. Pa. Apr. 17, 2020); with United States v. Madden, No. 20-07 Erie, 2020 WL 2839826, at *3 (W.D. Pa. June 1, 2020); and United States v. Torres, No. 2:19-cr-583, 2020 WL 2848192, at *1, *3 (E.D. Pa. June 2, 2020). To determine if the COVID-19 pandemic is a "compelling reason" for pretrial release under § 3142(i), some courts weigh six factors: "(1) whether a defendant has COVID-19 or is experiencing symptoms consistent with the disease; (2) whether a petitioner is among a group of individual that is at a higher risk of contracting COVID-19 based on; (3) age or a preexisting medical condition; (4) whether a defendant has been directly exposed to COVID-19; (5) a physical space in which a defendant detained and how physical space affects his risk of contracting COVID-19 and the efforts that prison has made to prevent or mitigate harm caused by COVID-19; and (6) other relevant factors." Ortiz, 2020 WL 1904478, at *6. This varies from the approach used by other district courts in the Third Circuit, which entails balancing four factors: 1) Does the defendant's proposed plan of release mitigate the risk to public and the defendant's risk of contracting COVID-19; 2) are the facility's mitigation steps sufficient; 3) can the defendant still communicate with his defense; and 4) has the presumption that there is "no condition or combination of conditions that would reasonably assure the safety of the public" been rebutted? Madden, 2020 WL 2839826, at *3. Still other district courts weigh the individual defendant's health risks against whether the defendant is a flight risk or a danger to the community. Torres, 2020 WL 2848192, at *1, *3. If the defendant is a flight risk or a danger to the community but does not have a health condition

that is vulnerable to COVID-19 complications, then COVID-19 is likely not a "compelling reason" for pretrial release. Id. Some courts in the Third Circuit also consider the condition and healthcare capabilities of the detention facility, as well as the proposed conditions of the defendant's release. Hunter, 2020 WL 2537579, at *4. Thus, although the Third Circuit Court of Appeals requires the existence of a specific threat to a defendant's health, the district courts vary in the factors they deem relevant in determining whether the COVID-19 pandemic constitutes a "compelling reason" for pretrial release under § 3142(i).

In United States v. Creek, the Fourth Circuit Court of Appeals listed three factors that it deemed relevant in determining whether the COVID-19 pandemic constitutes a "compelling reason" for a defendant's pretrial release. *United States v. Creek*, CCB-19-0036, App. No. 20-4251, at *1 (4th Cir. Apr. 15, 2020). The court analyzed the "severity of the risk that COVID-19 poses to the defendant, given his existing medical conditions and the current COVID-19 situation at the facility where he or she is being held, and whether that risk, balanced against the other Bail Reform Act factors, rises to the level of a 'compelling reason' for temporary release under § 3142(i)." *Creek*, App. No. 20-4251, at *1. Several district courts in the circuit use the factors set out by the Fourth Circuit Court of Appeals. United States v. Webb, No. 1:14CR00023-002, 2020 WL 2838547, at *1-2 (W.D. Vir. June 1, 2020); United States v. Patterson, No. TJS-20-1078, 2020 WL 2217262, at *4 (D. Md. May 7, 2020). But at least one court varied from the factors set out by the Fourth Circuit Court of Appeals, instead utilizing the Clark factors: "(1) the original grounds for a defendant's pretrial detention; (2) the specificity of a defendant's stated COVID-19 concerns; (3) the extent to which the proposed release plan is tailored to mitigate or exacerbate other COVID-19 risks to the defendant; and (4) the likelihood that the defendant's proposed plan would increase COVID-19 risks to others." Williams, 2020 WL 2404680, at *2-3 (citing Clark, 2020 WL 1446895, at *8-9). Thus, although many courts in the Fourth Circuit use the three-factor test, there are outliers that use the Clark factors to determine if the COVID-19 pandemic constitutes a "compelling reason" for a defendant's pretrial release under § 3142(i).

Because the Fifth Circuit Court of Appeals has not addressed what factors are relevant in determining whether the COVID-19 pandemic is a "compelling reason" for a defendant's pretrial release under § 3142(i), district courts within the circuit vary greatly in the factors they find relevant to that determination. United States v. Reddy, No. 3:19-CR-597-E, 2020 WL 1862564, at *3 (N.D. Tex. Apr. 13, 2020); United States v. Slaughter, No. 3:18-cr-00027, 2020 WL 1685117, at *2 (S.D. Tex. Apr. 6, 2020). While some district courts in the Fifth Circuit use the Clark factors, others use a three-factor test, weighing the condition of the detention facility and the individual defendant's health

conditions against the Bail Reform Act factors set out in 18 U.S.C. § 3142(g)(1)-(4). Reddy, 2020 WL 1862564, at *3; Slaughter, 2020 WL 1685117, at *2. Thus, the factors that the district courts in the Fifth Circuit find relevant in determining if the COVID-19 pandemic constitutes a "compelling reason" for a pretrial release under § 3142(i) vary greatly.

Although the Sixth Circuit Court of Appeals has not addressed what factors are relevant in determining whether the COVID-19 pandemic constitutes a "compelling reason" for pretrial release under § 3142(i), the court's ruling in United States v. You indicates that it would weigh the current condition of the detention facility and an individual defendant's health concerns against the Bail Reform Act factors in § 3142(g)(1)-(4). United States v. You, No. 20-5390, 2020 U.S. App. LEXIS 12991, at *1-3 (6th Cir. 2020). But, as the Sixth Circuit Court of Appeals has not officially addressed the issue, there is vast variation among the factors that the district courts deem relevant in determining if the COVID-19 pandemic is a "compelling reason" for a defendant's pretrial release. United States v. Haun, No. 3:20-CR-024-PLR-DCP, 2020 WL 1847063, at *3-4 (E.D. Tenn. Apr. 10, 2020); United States v. Robinson, No. 5:18CR627, 2020 WL 2519663, at *2-3 (N.D. Ohio May 18, 2020); United States v. Young, No. 1:19-cr-10040-JDB-1, 2020 WL 2529455, at *5-6 (W.D. Tn. May 18, 2020); United States v. Wiseman, No. 3:19-cr-00099, 2020 WL 2487199, at *2 (M.D. Tenn. May 14, 2020). Some district courts in this circuit use the Clark factors to determine whether the COVID-19 pandemic constitutes as "compelling reason" for pretrial release. Young, 2020 WL 2529455, at *5-6; Haun, 2020 WL 1847063, at *3-4; United States v. Turner, 5:19-CR-00037-TBR-4, 2020 WL 1943024, at *2 (W.D. Ky. Apr. 22, 2020). Differing slightly from the Clark factors, other district courts within the Sixth Circuit weigh a defendant's "individual health conditions, the existence of a present pandemic at the detention facility, a defendant's risk of contracting COVID-19 upon release, and a defendant's risk of spreading COVID-19 to others if released." Wiseman, 2020 WL 2487199, at *2. A few of the courts require the defendant to establish that he or she is no longer a danger to the community or a flight risk before they will consider whether the COVID-19 pandemic constitutes a "compelling reason" for release. Robinson, 2020 WL 2519663, at *2-3. If the defendant successfully rebuts the presumption, the courts then considers the defendant's individual health concerns associated with COVID-19. Id. Thus, the Sixth Circuit's district courts find various factors relevant in determining if the COVID-19 pandemic constitutes a "compelling reason" for a defendant's pretrial release under § 3142(i).

**CONCLUSION**

In most districts, even if a court finds that the COVID-19 pandemic constitutes new material information, it, generally, does not grant a defendant's pretrial release under § 3142(f). Further, it is apparent that the First, Second, Third, Fourth, Fifth, and Sixth Circuit Courts of Appeals have not established any specific and common set of factors relevant in determining whether the COVID-19 pandemic constitutes a "compelling reason" for a defendant's pretrial release under § 3142(i). But most courts in those circuits have held that the COVID-19 pandemic is not a "compelling reason" for pretrial release.

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June 14, 2021

The Honorable Elizabeth W. Hanes
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Richmond, VA 23219

Dear Judge Hanes,

I am a rising third-year law student at the University of Virginia School of Law, and I am writing to apply for a clerkship in your chambers. I expect to receive my J.D. in May 2022 and will be available to work any time after that.

I am applying to clerk in your chambers because I am a native Virginian and I want to continue my public service in my home state. I also appreciate that your court handles interesting cases relevant to local issues and of national importance. I believe that my significant experience serving in the Army prior to law school has prepared me to make a valuable contribution to your chambers. The challenges of military life instilled me with a strong work ethic and self-discipline, and my unique experience on deployments required me to demonstrate initiative and self-reliance. These traits will be especially helpful in serving as a judicial clerk, as I will work to quickly master the tasks required of your diverse and demanding docket.

Please find a copy of my resume and my most recent transcript enclosed. I have also enclosed a memorandum I completed during my internship at the Department of Veterans Affairs as a writing sample, forwarded to you with permission. Letters of recommendation from Professor Kristen Eichensehr, Professor Anne Coughlin, and Joan Moriarty are also included with my application.

If you have any questions or need to contact me for any reason, please feel free to reach me at the above address and telephone number. Thank you very much for considering me.

Sincerely,

*/s/ James R. Harper III*

James R. Harper III

# James R. Harper, III

2432 Arlington Blvd., Apt. C4, Charlottesville, VA 22903 • (703) 477-1291 • jrh9pb@virginia.edu

## EDUCATION

**University of Virginia School of Law**, Charlottesville, VA
*Juris Doctor*, Expected May 2022

- *Virginia Journal of International Law*, Managing Editor, Volume 62; Assistant Managing Editor, Volume 61
- University Judiciary Committee, Representative 2020-2021
- Virginia Law Veterans, Director of Communications 2020-2021

**Virginia Polytechnic Institute and State University**, Blacksburg, VA
*Graduate Certificate*, Security Studies, May 2019

**George Mason University**, Fairfax, VA
*Bachelor of Arts*, Global Affairs, December 2012

- *TABLET: The International Affairs Journal of George Mason University*, Editor

## EXPERIENCE

**Cadwalader, Wickersham & Taft**, New York, NY
*Summer Associate Program*, May – July 2021

**Department of State**, **Office of the Legal Adviser**, Washington, DC
*Office of International Claims and Investment Disputes, Externship*, January – April 2021

- Researched and drafted memoranda in support of litigation in cases before the International Court of Justice and international arbitration tribunals
- Developed potential legal strategy in defense of a claim under the Federal Tort Claims Act
- Reviewed and edited court filings for clarity, accuracy, and proper citation

**Department of Veterans Affairs, Office of General Counsel**, Washington, DC
*Court of Appeals Litigation Group, Internship*, June – August 2020

- Researched legal issues raised by opposing counsel and provided recommendations to a supervising attorney on the best legal position for the Department
- Drafted and filed motions in the United States Court of Appeals for Veterans Claims

**Professor Ashley Deeks, University of Virginia School of Law,** Charlottesville, VA
*Research Assistant*, May 2020

- Conducted and presented academic research on U.S. economic sanctions policy

**United States Army**, Fort Bragg, NC
*Psychological Operations, 6th Psychological Operations Battalion, 1st Special Forces Command (Airborne)*, August 2016 – August 2019

- Completed two deployments on a small Special Operations team to a United States Embassy in Eastern Europe in support of strategic-level foreign policy objectives
- Managed the negotiation, drafting and execution of numerous government contracts through coordination with government agencies, NGOs, and foreign businesses

*Student, 5th Battalion, 1st Special Warfare Training Group (Airborne)*, February 2015 – August 2016
*Infantry, 1-505th Parachute Infantry Regiment, 82nd ABN Division*, September 2013 – February 2015

## PERSONAL

**Language**: Russian (conversational)
**Clearance**: Top Secret security clearance
**Volunteer**: Service to School, J.D. Ambassador, January 2021 – present
**Interests**: Washington Nationals, softball, hiking, guitar

UNIVERSITY OF VIRGINIA
SCHOOL OF LAW

Name: James Harper III

Date: May 27, 2021
Record ID: jrh9pb

**This is a report of law and selected non-law course work (including credits earned). This is not an official transcript.**

**Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.**

| | | | | | |
|---|---|---|---|---|---|
| | | **FALL 2019** | | | |
| LAW | 6000 | Civil Procedure | 4 | B+ | Nelson,Caleb E |
| LAW | 6002 | Contracts | 4 | A- | Kordana,Kevin A |
| LAW | 6003 | Criminal Law | 3 | B+ | Ferzan,Kimberly |
| LAW | 6004 | Legal Research and Writing I | 1 | S | Buck,Donna Ruth |
| LAW | 6007 | Torts | 4 | B | Duffy,John F |
| | | **SPRING 2020** | | | |
| LAW | 7600 | Admiralty (SC) | 1 | B+ | Rutherglen,George |
| | | **SPRING 2020** | | | |
| LAW | 6001 | Constitutional Law | 4 | CR | Prakash,Saikrishna B |
| LAW | 7613 | Glbaliztn/Prvt Dispt Res (SC) | 1 | CR | McEvoy,Timothy J |
| LAW | 7173 | International Business Law | 3 | CR | Verdier,Pierre-Hugues |
| LAW | 7500 | JAG School Course | 1 | CR | Kendrick,Leslie Carolyn |
| LAW | 6005 | Lgl Research & Writing II (YR) | 2 | S | Buck,Donna Ruth |
| LAW | 6006 | Property | 4 | CR | Schragger,Richard C. |
| | | **FALL 2020** | | | |
| LAW | 6103 | Corporations | 4 | B+ | Kordana,Kevin A |
| LAW | 7019 | Criminal Investigation | 4 | A | Coughlin,Anne M |
| LAW | 7819 | Nat Sec Law and Pract (SC) | 1 | B+ | Olsen,Matthew Glen |
| LAW | 7067 | National Security Law | 3 | B+ | Deeks,Ashley |
| | | **SPRING 2021** | | | |
| LAW | 8804 | FT Externship: Directed Study | 3 | A | Eichensehr,Kristen E. |
| LAW | 8803 | FT Externship: Field Experienc | 10 | CR | Ryan,Anne Sprightley |
| LAW | 7827 | Global Bus & Corruption (SC) | 1 | A- | Dean,Richard N |

June 16, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

James Harper has asked me to write a letter in support of his application for a position as law clerk in your Chambers. I am very pleased to do so.

I became acquainted with James during the fall of 2020, when he was a member of my Criminal Investigation class. Over the years, I've found that the most talented students tend to come to my attention in one of two ways. First, some students are gregarious in the classroom, volunteering often to speak, and then they put in a good performance on our course examination. Second, there is the student who is a quiet participant in class – a strategy that I also admire, since it worked very well for me when I was a law student – and who then writes an exam that blows almost everyone else out of the water. James falls into the second category. Our classes that semester were held on Zoom in order to satisfy the University's COVID-19 restrictions, and, though the class sometimes felt like a heavier lift than usual, the in-person conversations tended to be lively and very useful. James attended every class, and his demeanor in our Zoom room was engaged, supportive, and professional. For the most part, he did his in-class learning by listening, and I did not really have the chance to form a clear impression of his legal talent. As for his exam? Well, that is a whole different story. The exam was a tough one, not because the issues were terribly opaque, but because each question contained a new, unfamiliar, and real police practice, and, to analyze them correctly, the students had to step back and consider first principles and to draw analogies between seemingly disparate authorities. On the exam, James simply did it all. He saw the issues, large and small; he put his finger on the conceptual keys necessary to unlocking the analysis; he deployed the precedents wisely, seeing where the new case fit into the big picture; and he offered nuanced assessments of the likely results in future litigation. The exam was a joy to read and a joy to grade – I find myself grinning from ear to ear as I recall the quality of James's prose – and, for his fine performance, James earned a grade of A. From this work alone, I predict with great confidence that James will be a terrific clerk. Those who master Criminal Investigation jurisprudence – with its complicated mix of standards of reasonableness and ostensible bright-line rules – inevitably prove to be talented lawyers.

Of course, you need not rely solely on my exam when evaluating James's fitness for t his important position. He has earned distinguished grades in all of his law school courses; at this point in his academic career, his grade point average stands at 3.478. To put that achievement in context, I would single out a couple of things. First, James is thriving in our grading system, which rigorously enforces a B+ mean. Second, James's transcript shows that his grades are on an upward trajectory, which testifies to his horsepower, his strong work ethic, and his abiding promise as an excellent young lawyer.

Before coming to law school, James served for six years in the United States Army. He spent his first year in a Parachute Infantry Regiment. Recently, I had an engaging conversation with him in which I shared with him my Dad's stories from his days as a paratrooper during the Korean War, but I became so engrossed in James's account of the sensations right before and after jumping that I forgot to ask how many jumps he completed during his training. James then moved on to a fascinating gig in Psychological Operations, a competitive position for which he applied and received special training. From talking to him, I could see that this work was formative for him, in the sense that he gained from it a unique perspective on life, politics, and governance in an impoverished Eastern European country, which in turn caused him to reflect deeply on the nature of the American political system and our role in world affairs. This work also cemented James's interest in studying law for it required him to concentrate on crafting strategic communications that would combat disinformation and provide arguments that would persuade foreign citizens to embrace rule-of-law values. James was highly successful in this position because he adapts quickly and knows how to learn on the job, because he has an eye for the details as well as the substance of his work, and because he is a committed team player. All of these traits are serving him very well in law school – which he loves – and are sure to serve him well in his clerkship and in the career that awaits him beyond.

I have not yet had the opportunity to spend time with James outside the classroom, but, as things return to normal this fall, I hope that I do. He is personable and respectful; he has a lively mind and a kindly sense of humor; he is mindful about how he uses his time, choosing activities through which he can give back to his peers as well as learn more about the fields of law that he hopes to enter one day. He is down-to-earth and generous with his time, willing to lend a helping hand wherever hands are most needed. When he confided that he had considered attending a foreign service program, such as the fine one at Georgetown University, I found myself thanking our lucky stars that he decided to study law and that he chose to commence his career here. He's determined to make a difference in the world – by working to shore up our domestic institutions, he aims to contribute to the stability of the world order – and I look forward to witnessing what he will achieve. Because I think that you and your staff will feel the same way about him, I am delighted to endorse his clerkship application.

If you have questions or concerns about James or if I can be of any other assistance to you, please reach out to me by email or telephone. If you would like to talk by phone, please call me on my cell, which is 434-465-0090. I am at your service.

Anne Coughlin - acoughlin@law.virginia.edu - 434-243-0392

Very truly yours,

Anne M. Coughlin
Lewis F. Powell, Jr. Professor of Law
University of Virginia School of Law
580 Massie Rd.
Charlottesville, VA 22903
434-243-0392
434-924-7536 (fax)
acoughlin@law.virginia.edu

June 13, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write in support of James Harper's application to serve as a law clerk in your chambers. James is an excellent writer and researcher, and I am confident he will make a superb law clerk.

I met James just before the spring 2021 semester. He had secured an externship with the State Department's Office of the Legal Adviser, where I previously served as a special assistant, and I agreed to supervise the research paper that accompanied his externship. In our first conversation about his upcoming externship and research, James impressed me with his focus, preparation, and expertise on international and national security-related issues. Having come to learn more about James's background, none of this is surprising: prior to law school, he served for six years in the U.S. Army, including multiple deployments with Special Forces Command, and he has carried forward a similar dedication to his law school experience.

The research paper James wrote this semester was simply excellent. Drawing inspiration from his work at the State Department's Office of International Claims and Investment Disputes, James investigated the extent to which the United States may be subject to international legal claims based on sanctions it has imposed. The International Court of Justice (ICJ) in February 2021 accepted jurisdiction in a case that Iran brought against the United States claiming that U.S. sanctions violated the 1955 U.S.-Iran Treaty of Amity, from which the United States has now withdrawn. James conducted original research to determine whether other U.S. sanctions on foreign governments, entities, or persons might subject the United States to similar treaty-based claims. This research required him to track down and analyze several kinds of treaties, assess whether they provide compulsory jurisdiction in the ICJ, and then cross-reference those legal provisions with the nationalities of individuals and entities subject to multiple U.S. sanctions regimes. Ultimately, James identified several, what he called, "plausible situations" where the United States might be subject to additional lawsuits in the ICJ. These are novel arguments, and I have encouraged him to publish the paper. Moreover, he did not just carefully wade through legal texts and complex administrative sanctions regimes, but also thoughtfully situated the project as part of a broader critique of sanctions as an increasingly important tool in U.S. foreign relations.

In addition to his skills as a researcher and writer, James is also a leader on campus. He is the director of communications for Virginia Law Veterans, the managing editor of the Virginia Journal of International Law, and a representative to the University Judiciary Committee.

I have very much enjoyed getting to know James during the last semester, and I have no doubt that he will be a great law clerk. If there is any additional information I can provide, please feel free to email or call me.

Sincerely,

Kristen E. Eichensehr
Martha Lubin Karsh and Bruce A. Karsh Bicentennial Professor of Law
University of Virginia School of Law
580 Massie Road
Charlottesville, VA 22903-1738
keichensehr@law.virginia.edu
(434) 924-3572
(434) 982-2845 facsimile

**Department of Veterans Affairs**
**Office of General Counsel**
**Washington DC 20420**

•June 22, 2021 **In reply refer to: 027C**

To whom it may concern:

Mr. James Harper worked as a law clerk in the Court of Appeals Appellate Litigation Group of the Office of General Counsel from June to August 2020. I was his direct supervisor on the C team where he worked with seven attorneys. I observed first-hand Mr. Harper's superior work ethic, impressive skills, and impeccable character.

During his tenure here, Mr. Harper worked with a variety of attorneys and demonstrated his abilities in many different areas. He drafted dispositive pleadings in several cases as well as internal memoranda evaluating the merits of cases prior to Court-ordered telephonic conferences between the parties and a member of the Court's staff. Mr. Harper's work demonstrated incisive legal analysis, superior organization skills, and exceptional use of legal authority. Mr. Harper also demonstrated the ability to balance competing assignments, analyze multiple issues, and persuasively present the Secretary's position, both orally and in writing. Notably, in several cases in which Mr. Harper drafted the memorandum outlining the Secretary's position in an individual case, he also effectively presented that position at the Court conferences.

Mr. Harper also conducted extensive legal research as to the history of a regulation in an esoteric area of law. Mr. Harper exhibited exceptional research and writing skills in this project. His work was the basis of VA's brief filed after his internship had ended and resulted in an affirmance of the agency's decision by the Court.

An enthusiastic and motivated self-starter, Mr. Harper is a very affable person, who got along well with people at all levels of our organization and quickly earned the respect and confidence of those with whom he worked. In sum, James Harper was a tremendous asset to our litigation team and would be an excellent candidate for any position you wish to fill.

If more information is required or I can be of further assistance, please contact me at (703) 517-4435.

Sincerely yours,

Joan E. Moriarty
Deputy Chief Counsel

## Writing Sample

The following writing sample is a memorandum I completed while interning in the Court of Appeals Litigation Group (CALG) at the Department of Veterans Affairs (VA). CALG represents VA in claims before the Court of Appeals for Veterans Claims, a federal court that has exclusive jurisdiction over decisions made by the Board of Veterans' Appeals (Board). My supervising attorney asked me to write a memorandum analyzing a case on appeal from the Board, in which a Veteran was denied waiver of repayment for an overpayment of disability benefits. The goal of this memorandum was to determine whether CALG should defend the Board's decision or whether the Board's decision was in error and required remand for a new opinion. I later briefed my conclusions from this memorandum to opposing counsel at a pre-trial briefing conference.

I received permission from my supervising attorney to use this memorandum as my writing sample. Some facts have been changed from the original to protect confidentiality.

MEMORANDUM

TO: [redacted]
FROM: James Harper
RE: [redacted]
DATE: July 27, 2020

## Introduction

Appellant is a Gulf War-era Veteran with a qualifying honorable period of service and a 100% disability rating for service-connected injuries. Appellant was arrested on December 15, 2011, for felony parole violation. Appellant notified the VA Regional Office (RO) of his arrest on January 10, 2012, and requested that his disability compensation be adjusted accordingly. (R. at 1668). Veterans with a 20% or higher disability rating who are incarcerated for 60 days or more for a felony conviction have their compensation reduced to 10% during the period of incarceration. 38 C.F.R. 3.665. The RO notified Appellant on February 15, 2012, that it could not adjust his benefits until he had been convicted of a felony. (R. at 1660).

The RO was unaware at that time that Appellant had been previously been convicted of a felony and was incarcerated for violation of his parole for that felony conviction. (R. at 800-01). The RO became aware of this error in July 2013 and opened an investigation. *Id.* On December 5, 2013, the RO reduced Appellant's disability compensation to 10% with an effective date of February 15, 2012, determining that Appellant had been overpaid $29,921.07. (R. at 800).

The RO denied Appellant's request for waiver of recovery of the overpayment on February 12, 2014. (R. at 801). Appellant subsequently filed an appeal with the Board of Veterans' Appeals (Board) on July 13, 2016. *Id.* The Board also denied Appellant's request for waiver. *Id.* He is appealing from this decision to the Court of Appeals for Veteran Claims, arguing that: (1) the Board erred in balancing the faults of Appellant and VA in the creation of the debt; (2) the Board erred in failing to address the undue hardship that collection of the debt would place on Appellant; (3) the Board erred in failing to address the possibility of partial waiver of recovery of the debt. Appellant argues that all of these are "reasons or bases" problems with the Board's decision that require remand. *See Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990) (the Board's statement must be adequate to enable an appellant to understand the precise basis for the Board's decision, and reasons or bases for factual findings are necessary to facilitate informed review).

## Questions Presented

I. Did the Board properly balance the fault between Appellant and VA in the creation of the debt?
II. Did the Board properly address the undue hardship that collection of the debt would have on Appellant?
III. Is the Board required to address the possibility of partial waiver of the debt?

## Analysis:

### I. The Board Did Not Properly Balance the Fault for Creation of the Debt Position: Remand

Appellant argues that the Board did not consider computer matches from May 2012 and February 2013 that should have put VA on notice that Appellant was

incarcerated for a felony. (SOI at 8) (citing the computer matches at R. at 1559-65, 1612-13). Appellant also argues that the Board erred by not considering Appellant's attempts to notify VA of his incarceration and to reduce payments during the period of his incarceration. *Id.* Appellant argues that the Board must consider VA's failure to address these issues, which presumably show that the creation of the debt is entirely the fault of VA, to provide adequate reasons and bases for its decision.

Appellant argues that he is not at fault for not notifying VA of his felony conviction because he was not aware that he had been convicted of a felony and thus, he could not notify VA of something he did not know. (SOI at 4). The February 2013 computer match indicates that Appellant was convicted of a felony but VA did not review these matches until July 2013, allowing for an accumulation of the debt during this period. A memorandum from the RO stated that the delay in review was due to claims processing delays. (R. at 1098, 1097-99).

38 U.S.C. § 5302(a) states that VA shall not recover overpayments when such recovery would be against "equity and good conscience". 38 C.F.R. § 1.965(a) provides the scope of the "equity and good conscience" standard in arriving at a fair decision between the obligor and the government. This standard requires consideration of certain elements, including:

> 1. Fault of debtor. Where actions of the debtor contribute to creation of the debt.
> 2. Balancing of faults. Weighing fault of debtor against Department of Veterans Affairs fault.

38 C.F.R. § 1.965(a). The inquiry here is not whether the Board made the correct determination of fault but whether the Board properly considered all evidence in making

a determination of fault. Waiver decisions will only be overturned by the Court where it determines that that Board's decision was "arbitrary and capricious" and not in line with regulatory guidance. *Smith v. Derwinski*, 1 Vet.App. 267, 279 (1991) (citing 38 U.S.C. § 4061(a)(3)(A) (1988); *Service v. Dulles*, 354 U.S. 363 (1957)). The Court held that the "arbitrary and capricious" standard is narrow and the court will not substitute its judgment for that of the Board, but the Board must examine the relevant data and articulate a satisfactory explanation. *Id*.

Appellant misrepresents the BVA decision in claiming that the Board "placed all fault on the veteran in the creation of the debt". (SOI at 5). The Board addresses both the May 2012 and February 2013 computer matches in its decision. (R. at 800). The Board acknowledges (and Appellant cites this portion of the Board opinion in his SOI) that the RO could have acted earlier to confirm Appellant's felony conviction, thus substantially reducing the debt. (R. at 801) ("Had the RO sought to confirm the details of the Veteran's incarceration at any point between February 2012 and July 2013, the overpayment due could have been substantially reduced."). The Board did not place fault for the debt solely on Appellant, but rather determined that the fault for the debt lays on both VA and Appellant. *Id*.

The Board determined that Appellant was partially at fault because he failed to notify VA that he was convicted of a felony in his communications with the RO. *Id*. Appellant wrote to the RO shortly after his incarceration and requested that his benefits be adjusted accordingly. (R. at 1668). Appellant argues that he did not have notice that he would have to inform VA again when he was convicted of the felony because

VA sent the letter containing this information to the wrong address. (SOI at 3 (footnote 2)).

Here, the argument that Appellant did not have notice that he needed to inform VA after his felony conviction is not adequately addressed in the Board decision. Appellant notified VA within 30 days of his incarceration and asked that his benefits be adjusted accordingly. (R. at 801). Appellant would have been put on notice of his obligation to inform VA of his felony conviction, but VA sent the letter that would have informed him of this to the wrong address. (SOI at 3 (footnote 2)). The Board determined that Appellant is partially at fault for the creation of the debt beause he continued to receive benefits for which he was not entitled from February 2013 – July 2013 without informing VA of the error. (R. at 801). However, the Board does not address whether Appellant should have been put on notice by the continued payments. *Id*.

Appellant's knowledge of his duty to inform VA of his conviction is "relevant data" that the Board should have considered in the balancing of faults for creation of the debt. *Smith*, 1 Vet.App. at 279. Remand is recommended here for the Board to address whether the Appellant should have been aware of his obligation to inform VA of his felony conviction, given that he informed VA of his incarceration and received no further communication from VA indicating that he must notify again upon conviction.

**II. The Board Did Not Properly Address Undue Hardship Created by Collection of the Debt**
**Position: Remand**

The Board stated that it weighed the hardship that would be created by recovery of the debt against Appellant's fault in creating the debt and that the hardship would not outweigh Appellant's fault in creating the debt. (R. at 802). The Board further states that VA benefits are meant to compensate for the loss of income due to service-connected disability and that Appellant's loss of income is due to his imprisonment. *Id*. Appellant argues that, while the Board noted that Appellant had some expenses in prison, the Board failed to fully consider Appellant's financial circumstances and the impact that recovery of the debt would have on him. (SOI at 5).

Appellant correctly cites to 38 C.F.R. § 1.965, which states that in considering whether recovery of an overpayment would be against "equity and good conscience", the element of "undue hardship" should consider "whether collection would deprive the debtor or family of basic necessities". The Court further defined "undue hardship" in *Stone v. Derwinski*, holding:

> Undue hardship exists where collection, in installments if necessary, would seriously impair the veteran's ability to provide himself and his dependents with the necessities of life, including food, clothing, shelter, and medical attention. Those require an examination of his current financial status, with attention to his future prospects as well. He is expected to afford the same attention and expend the same effort in relieving his Government obligations as he does to others.

2 Vet.App. 56, 58 (1992). In *Cullen v. Brown*, the Court held that remand was required on "reasons or bases" ground where the VA failed to consider the full scope of the Veteran's income and expenses in considering the "undue hardship" element. 5 Vet.App. 510, 512-13 (1993). In that case, the Board determined that repayment of the debt would not cause the Veteran to experience financial hardship but did not address

how the debt would affect the Veteran's finances as evidenced in the record. *Id*. *Cf., Berotti v. West*, 11 Vet.App. 194, 199 (1998) (the Board's decision that repayment would not be an undue hardship is affirmed where it considers how the Veteran would be able to repay the debt given his financial circumstances).

Here, the Board erred in its consideration of whether repayment of the debt would be an undue hardship on Appellant. The Board's statement that it weighed the consideration of undue hardship against Appellant's fault in creating the debt goes against the consideration of the elements outlined in 38 C.F.R. § 1.965. The Board needs to consider whether the repayment of the debt would deprive Appellant or his family of basic necessities. The Board should address how the repayment of the debt will affect Appellant given the evidence of Appellant's financial circumstances present in the record. (*See* R. at 1466 (1465-68), 961 (960-61)). Whether Appellant's financial hardship is due to his service-connected disability or his incarceration is irrelevant for this inquiry and should not be a factor in determining whether collection of the debt would be an "undue hardship". *Stone*, 2 Vet.App. at 58. Remand is required for the Board to provide an adequate statement of how collection of the debt would affect Appellant's ability to provide for basic necessities for himself or his family. Of course, Appellant is free to submit additional evidence of his financial circumstances to the Board upon remand. *Kutscherousky v. West*, 12 Vet.App. 369, 372 (1999) (per curiam order).

## III. The Board Did Not Consider the Possibility of Partial Remand
## Position: Defend

Appellant argues that remand is appropriate because the Board failed to discuss whether partial remand is appropriate. (SOI at 6). Appellant contends that the Board must state whether partial remand is appropriate because it acknowledges that VA is partially at fault for the creation of the debt. *Id*.

Appellant points to no statutory authority or precedent that indicates that the Board is required to provide a discussion on whether partial remand is appropriate. The Veteran's entitlement to a partial waiver of the recovery of the debt is not one of the elements to be considered in determining "equity and good conscience" listed in 38 C.F.R. § 1.965(a) (although, admittedly, that list is not all-inclusive). Precedent in this area suggests that the Board may consider partial waiver of recovery of the debt so long as the decision is in line with the standard of "equity and good conscience" outlined in in 38 C.F.R. § 1.965(a). *See, e.g., Kaplan v. Brown*, 9 Vet.App. 116, 120 (the Board's decision to grant a partial waiver was well reasoned given the application of § 1.965(a) to the facts of that case); *Stone*, 2 Vet.App. at 58 (the Board's decision to grant a partial waiver is affirmed given that it otherwise satisfied "reasons or bases" requirements).

Here, Appellant's argument would essentially create a new rule that the Board must consider the possibility of partial waiver as an element of "equity and good conscience" *sua sponte*. This is simply not supported in statutory authority nor precedent. The Board may consider partial waiver of repayment given factors of equity and good conscience, but it is not required to do so. While remand is not warranted on this basis, the point is moot given our agreement that remand is warranted on other

grounds. Appellant is free to request the Board to consider partial waiver upon remand and can cite elements of "equity and good conscience" (fault, undue hardship, etc.) as reasons why he should be entitled to such.

## Conclusion

This case warrants remand to the Board. The Board's balancing of faults for the creation of the debt is inadequate because it did not address whether Appellant had knowledge of his obligation to inform VA of his conviction. The Board's reasoning on the undue hardship that would be created by repayment of the debt is inadequate because it does not consider how Appellant will provide basic necessities for himself and his family. The Board does not have to automatically consider the possibility of partial waiver as a matter of "equity and good conscience", and this is not a basis for remand. However, this point is moot given the other grounds for remand and Appellant is free to request partial waiver of the debt upon remand.

## Applicant Details

| | |
|---|---|
| First Name | **Claire** |
| Last Name | **Haws** |
| Citizenship Status | **U. S. Citizen** |
| Email Address | **chaws@umich.edu** |
| Address | **Address**<br>Street<br>**615 S Main St, Apt 340**<br>City<br>**Ann Arbor**<br>State/Territory<br>**Michigan**<br>Zip<br>**48104**<br>Country<br>**United States** |
| Contact Phone Number | **6513233538** |

## Applicant Education

| | |
|---|---|
| BA/BS From | **Northwestern University** |
| Date of BA/BS | **June 2019** |
| JD/LLB From | **The University of Michigan Law School**<br>**http://www.law.umich.edu/currentstudents/careerservices** |
| Date of JD/LLB | **May 6, 2022** |
| Class Rank | **School does not rank** |
| Law Review/Journal | **Yes** |
| Journal(s) | **Michigan Business & Entrepreneurial Law Review** |
| Moot Court Experience | **No** |

## Bar Admission

## Prior Judicial Experience

| | |
|---|---|
| Judicial Internships/ Externships | **No** |

Post-graduate Judicial Law Clerk **No**

## Specialized Work Experience

## Recommenders

Pinto, Timothy
tpinto@umich.edu
734-763-6256
Thomas, Kim
kithomas@umich.edu
734-647-4054

## References

Professor Timothy Pinto: tpinto@umich.edu, (734) 763-6256;

Professor Kim Thomas: kithomas@umich.edu, (734) 647-4054

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Claire Haws
615 South Main Street, Apt 340
Ann Arbor, Michigan 48104
(651) 323-3538
chaws@umich.edu

June 21, 2021

The Honorable Elizabeth W. Hanes
U.S. District Court for the Eastern District of Virginia
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, Virginia 23219

Dear Judge Hanes,

I am a rising third-year student at the University of Michigan Law School and I am writing to apply for a clerkship in your chambers for the 2022-2024 term.

Before my second year of law school, I interned with the City of Chicago Department of Law's Appellate Division. In that position I researched and prepared memoranda and briefs on both state and federal law, which sharpened my writing abilities and taught me to research areas of the law with which I was previously unfamiliar. These skills have served me well in law school, where I volunteered for the Civil-Criminal Litigation Clinic and was selected to author a note for the Michigan Business and Entrepreneurial Law Review. This summer I am working as a summer associate for Axinn, Veltrop and Harkrider in New York, where I have had the opportunity to work on pro bono matters and to prepare drafts of motions, research memoranda, and briefs. These experiences have taught me how to balance competing deadlines without sacrificing the quality of my work, and have reaffirmed my belief that clerking would be the best possible training for my future career as a litigator.

I have attached my resume, law school grade sheet, and a writing sample for your review. Letters of recommendation from the following professors are also attached:

- Professor Timothy Pinto: tpinto@umich.edu, (734) 763-6256
- Professor Kim Thomas: kithomas@umich.edu, (734) 647-4054

Thank you for your time and consideration.

Respectfully,

Claire Haws

# Claire Haws

615 South Main Street, Unit 340, Ann Arbor, Michigan 48104
651-323-3538 • chaws@umich.edu

## EDUCATION

**UNIVERSITY OF MICHIGAN LAW SCHOOL** — Ann Arbor, MI
*Juris Doctor* GPA 3.631 — Expected May 2022
Journal: Michigan Business and Entrepreneurial Law Review, *Senior Editor*
Publication: Claire Haws, *The Death of Amateurism in the NCAA: How the NCAA Can Survive the New Economic Reality of College Sports*, 11 MICH. BUS. & ENTREPRENEURIAL L. REV. (forthcoming Spring 2022)
Honors: Dean's Merit Scholarship
Activities: Member, Women Law Students Association
Student Advocate, Student Sexual Assault and Harassment Legal Advocacy Service

**NORTHWESTERN UNIVERSITY** — Evanston, IL
*Bachelor of Arts in Political Science and in Legal Studies,* Minor in International Studies — June 2019
Honors: Weinberg Departmental Honors in Legal Studies, Legal Studies Thesis of Distinction
Activities: Director of Survivorship, Northwestern University Relay for Life
Vice President of Membership, Illinois Epsilon Chapter of Pi Beta Phi

## EXPERIENCE

**AXINN, VELTROP & HARKRIDER** — New York, NY
*Summer Associate* — May – July 2021

**CITY OF CHICAGO DEPARTMENT OF LAW, APPEALS DIVISION** — Chicago, IL
*Summer Law Clerk* — June – August 2020

- Researched and authored internal memoranda for appellate cases involving Freedom of Information Act requests, judicial review of administrative agency final decisions, and permanent injunctions
- Drafted section of appellate brief defending propriety of special interrogatories submitted at trial
- Attended and participated in moot courts and case strategy conferences

**STATE REPRESENTATIVE SARA FEIGENHOLTZ** — Chicago, IL
*Legislative Intern* — June – August 2018

- Researched and summarized proposed and pending state legislation to inform Representative Feigenholtz and her Chief of Staff on the merits of upcoming bills and prepare Representative Feigenholtz to vote
- Authored and published press releases for Representative Feigenholtz's newsletter and website to notify constituents of recent legislative developments and upcoming local events
- Summarized and responded to constituent correspondence to maintain positive relationships with constituents

**INSTITUTE OF INTERNATIONAL RELATIONS** — Prague, Czech Republic
*Research Assistant* — June – August 2017

- Researched historical trends in Chinese foreign exports and imports to assist IIR Fellow in writing a book on Chinese domestic and foreign policy
- Organized and advertised IIR conferences and events to ensure events ran smoothly, encourage attendance, and inform the public on the research being completed by IIR scholars
- Researched, authored, and published an independent research article analyzing modern relations between the United States and Russia

## ADDITIONAL

**Interests**: Hiking, skiing, paddleboarding, crossword puzzles, long walks in the woods with my Labrador

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

**Name:** Haws,Claire L
**Student#:** 94355379

University Registrar

| Subject | Course Number | Section Number | Course Title | Instructor | Load Hours | Graded Hours | Credit Towards Program | Grade |
|---|---|---|---|---|---|---|---|---|
| **Fall 2019** | **(September 03, 2019 To December 20, 2019)** | | | | | | | |
| LAW | 510 | 003 | Civil Procedure | Nicholas Bagley | 4.00 | 4.00 | 4.00 | A- |
| LAW | 530 | 003 | Criminal Law | JJ Prescott | 4.00 | 4.00 | 4.00 | B+ |
| LAW | 580 | 004 | Torts | Margo Schlanger | 4.00 | 4.00 | 4.00 | A- |
| LAW | 593 | 014 | Legal Practice Skills I | Timothy Pinto | 2.00 | | 2.00 | S |
| LAW | 598 | 014 | Legal Pract:Writing & Analysis | Timothy Pinto | 1.00 | | 1.00 | S |
| **Term Total** | | | | **GPA: 3.566** | **15.00** | **12.00** | **15.00** | |
| **Cumulative Total** | | | | **GPA: 3.566** | | **12.00** | **15.00** | |
| **Winter 2020** | **(January 15, 2020 To May 07, 2020)** | | | | | | | |
| *During this term, a global pandemic required significant changes to course delivery. All courses used mandatory Pass/Fail grading. Consequently, honors were not awarded for 1L Legal Practice.* | | | | | | | | |
| LAW | 520 | 001 | Contracts | Albert Choi | 4.00 | | 4.00 | PS |
| LAW | 540 | 005 | Introduction to Constitutional Law | Julian Davis Mortenson | 4.00 | | 4.00 | PS |
| LAW | 594 | 014 | Legal Practice Skills II | Timothy Pinto | 2.00 | | 2.00 | PS |
| LAW | 622 | 001 | Editing and Advocacy Law and Letters | Patrick Barry | 1.00 | | 1.00 | PS |
| LAW | 792 | 001 | Sports Law | Timothy Pinto | 3.00 | | 3.00 | PS |
| **Term Total** | | | | | **14.00** | | **14.00** | |
| **Cumulative Total** | | | | **GPA: 3.566** | | **12.00** | **29.00** | |

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

**Name:** Haws,Claire L
**Student#:** 94355379

University Registrar

| Subject | Course Number | Section Number | Course Title | Instructor | Load Hours | Graded Hours | Credit Towards Program | Grade |
|---|---|---|---|---|---|---|---|---|
| **Fall 2020** | | **(August 31, 2020 To December 14, 2020)** | | | | | | |
| LAW | 479 | 001 | Collective Bargain&Arbitration | Curtis Mack | 2.00 | 2.00 | 2.00 | A |
| LAW | 632 | 001 | Law of Evidentiary Privilege | Norman Ankers | 3.00 | 3.00 | 3.00 | A- |
| LAW | 790 | 001 | Early Amer Legal History | William Novak | 3.00 | | 3.00 | P |
| LAW | 920 | 001 | Civil-Criminal Litigation Clnc | David Santacroce<br>Allison Freedman<br>Kimberly Thomas | 4.00 | 4.00 | 4.00 | A |
| LAW | 921 | 001 | Civil-Criminal Litig Clnc Sem | David Santacroce<br>Allison Freedman<br>Kimberly Thomas | 3.00 | 3.00 | 3.00 | A- |
| **Term Total** | | | | **GPA: 3.850** | **15.00** | **12.00** | **15.00** | |
| **Cumulative Total** | | | | **GPA: 3.708** | | **24.00** | **44.00** | |
| **Winter 2021** | | **(January 19, 2021 To May 06, 2021)** | | | | | | |
| LAW | 469 | 001 | Reproductive Rights & Justice | Leah Litman | 2.00 | 2.00 | 2.00 | A |
| LAW | 486 | 001 | Couns & Advocacy in Antitrust | Steven Cernak | 2.00 | 2.00 | 2.00 | B+ |
| LAW | 657 | 001 | Enterprise Organization | Albert Choi | 4.00 | 4.00 | 4.00 | B+ |
| LAW | 677 | 001 | Federal Courts | Michael Sant'Ambrogio | 4.00 | 4.00 | 4.00 | B+ |
| LAW | 900 | 360 | Research | Timothy Pinto | 2.00 | 2.00 | 2.00 | A |
| **Term Total** | | | | **GPA: 3.500** | **14.00** | **14.00** | **14.00** | |
| **Cumulative Total** | | | | **GPA: 3.631** | | **38.00** | **58.00** | |

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

**Name:** Haws,Claire L
**Student#:** 94355379

University Registrar

| Subject | Course Number | Section Number | Course Title | Instructor | Load Hours | Graded Hours | Credit Towards Program | Grade |
|---|---|---|---|---|---|---|---|---|
| **Fall 2021** | **(August 30, 2021 To December 17, 2021)** | | | | | | | |
| Elections as of: | 05/31/2021 | | | | | | | |
| LAW | 569 | 001 | Legislation and Regulation | Daniel Deacon | 4.00 | | | |
| LAW | 612 | 001 | Alternative Dispute Resolution | Allyn Kantor | 3.00 | | | |
| LAW | 669 | 001 | Evidence | David Uhlmann | 3.00 | | | |
| LAW | 731 | 001 | Legal Ethics and Professional Responsibility | Bob Hirshon | 2.00 | | | |

End of Transcript
Total Number of Pages 3

Unofficial Transcript

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